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OF THE

OCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, ESQ.

“ *Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον.*”—ARIST. *Pol.* II. 1.

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IN MEMORIAM: W. F. CRAIES.

In the late W. F. Craies, a life full of performance and promise has been cut short, to the deep regret of all who knew him. In this number we give portrait of his fine and striking face, the expression of a mind of singular vigour and versatility and of a genial and generous nature. Coming from Oxford to the Bar with a record of distinction, he made himself master of more than one region of jurisprudence. Probably no man living had a more horough knowledge of the criminal law of England in all its branches and of the practice: the admirable Act just passed consolidating the law of perjury was his drafting. His weekly "Notes on Magistrates' Cases" in the *Law Journal* have for years past formed the most attractive feature of that publication. Only a few months since he had brought out a valuable work on the Marriage Laws of the Empire. Nor were his energies confined to aw. He took a deep interest in social questions, notably the housing problem, and was an active member of the Mansion House Committee. He was equally earnest in the cause of legal education, and his election—it seems but yesterday—as Dean of the Faculty of Law in the University of London and member of the Senate was a well-deserved tribute to services endered to that cause. But of all who have suffered by his death there has been no greater loser than the Society of Comparative Legislation. From he time when the Society was founded—now more than sixteen years ago—he had given it his unstinted support—by articles, by notes, by summaries of egislation; always prompt to help, accurate and thorough in his work. "The law," as Mr. Justice Stephen once said, "is a very long hill indeed to climb," and it deepens the regret we feel that Mr. Craies should have been called away just at the time when he was reaching the summit of the hill and his merits were receiving recognition. "Sic diis visum est." That part of man's life which is most important is that which is unseen by the public. In his case it was rich in good deeds rewarded by enduring riendships.

THE LIVING WAGE IN THE AUSTRALIAN ARBITRATION COURT

[*Contributed by* PROF. HARRISON MOORE.]

THE compulsory submission of industrial disputes to Courts of Arbitration in Australia has furnished an already extensive mass of material for illustrating the elements which must practically enter into the determination of these cases. The fact that the tribunal is a "Court," its President a member of the judicial bench, has quite naturally led to the embodiment of the award in a reasoned opinion, in which the Court affirms certain principles of action, states the grounds on which it accepts certain and rejects other facts, and justifies in detail the order that it makes. Equally naturally, these opinions have come to be published in "reports," on the assumption that the principles, at any rate, will be acted upon in subsequent cases, a view which is abundantly justified by the event. It may be interesting to lawyers as well as to economists to see something of the attitude of the Commonwealth Conciliation and Arbitration Court towards its novel functions. It should be stated that the Court consists of a President who is one of the justices of the High Court of Australia. In practice, it has been the junior justice who has acted in this capacity. If this course becomes usual it may be unfortunate, since it almost compels, on every judicial appointment, some special consideration of the justice's possible action in a sphere which is rather political or administrative than strictly judicial.

Each of the Presidents of the Court (O'Connor J. and Higgins J.) has called attention to the fact that the determination of the questions submitted to them has to be made without any guide from the Legislature, and Higgins J., in his earliest judgment, pointed out very clearly the anomalous character of the functions cast upon a judge in terms which carry a grave warning. He said: "It is to be regretted that the Legislature has not given a definition of the words ('fair and reasonable'). It is the function of the Legislature, not of the judiciary, to deal with social and economic problems; it is for the judiciary to apply and when necessary to interpret the enactments of the Legislature. But here, this whole controversial problem, with its grave social and economic bearings, has been committed to a judge who is not, at least directly, responsible, and who ought not to be responsive, to public opinion. Even if the delegation of duty should be successful in this case, it by no means follows that it will be so hereafter. I do not protest against the difficulty of the problem, but against the confusion of functions—against the failure to define, the shunting of legislative responsibility. It would be almost as reasonable to tell a Court to do what is 'right' with regard to real estate, and yet lay down no laws or principles for its guidance. In the course of the long discussion of this case, I have become convinced that the President of this Court is put in a false position. The strength of the judiciary in the public confidence is largely owing to the fact that the judge has not to devise great principles of action as between great classes, or to lay down what is fair and reasonable as between contending classes in the community; but has to carry out mandates of the Legislature, evolved out of the conflict of public opinion after debate in Parliament. I venture to think that it will not be found wise thus to bring the judicial department within the range of political fire."[1] The lapse of four years has added significance to this protest both for Australia and for England. The stumbling-block of arbitration is the personnel of the tribunal, and the economic standpoint—vulgarly, the "sympathies"—of the arbitrator. The learned justice who uttered the warning has a social and economic standpoint which approximates to that of the employee rather than that of the employer, with the consequence that the tribunal over which he presides is rushed by the organisation of employees, his name is received with rounds of applause at Labour gatherings, while his impartiality is assailed by hostile newspapers to such an extent as has made it necessary to invoke the punitive power of commitment for contempt with which the tribunal has been invested by law. The truth is, of course, that the very nature of the function puts the "indifferent" administration of justice out of the question, while the simulation of a judicial function safeguarded by the protection thrown around Courts of Justice may seriously restrict that freedom of criticism to which British people are accustomed in dealing with political acts.

The Court being without a definite guide from the Legislature, must however as a Court act upon some general principle and upon one which would be applicable to all cases.[2] That principle must be gathered from the general scope and intent of the statute, and from the nature of the subject-matter. This at once involved the rejection of "market value of services" as the sole test of remuneration—"the whole body of modern legislation against sweating is founded on the experience that competition, which fixes market value, may under certain conditions produce a market rate of wage which literally is not enough to keep body and soul together."[3]

The first important case before the Court was one in which the claimants were an organisation of master mariners and other certificated navigating officers, and where therefore there was no question of a "living wage" before the Court. But from the observations of the learned President in the case

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[1] *Ex parte McKay*, (1907) 2 Commonwealth Arbitration Reports, p. 3.

[2] *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association*, (1906) 1 Commonwealth Arbitration Reports, p. 25.

[3] *Ibid.* p. 27.

(first quoted) it is clear that he equally rejects the "market value" as the sole test in cases where the fair and reasonable remuneration for the work done is largely in excess of the "living wage." Obviously, this must be so if the Court is to fulfil its function of settling disputes in skilled and highly remunerated industries. But while market value cannot be the sole test, it must always be a very important element in any test that is to be applied.[1] Before coming to the way in which this factor is employed by the Court, we may note certain other considerations or rights of the parties to which the Court adverts. Wages and profits are distinct; employees are not, except in co-operative concerns, partners; they run no financial risks and incur no liabilities, hence a right to a fair wage is not a right to be awarded a fair proportion of the profits.[2] The employer, too, has the right to manage his own business in his own way without interference, except such interference as is necessary to make effective the right given by the Act to fair wages.[3] Coming then to the data for the determination of a fair wage, the Court takes for comparison the ordinary competitive wages of officers in the position of the claimants engaged in deep-sea voyages, and uses that as the starting-point. To that wage, something should be added for the increased responsibility and risk of constant coast and harbour navigation, and the management of ships in pilotage waters; something must be added for the increased cost of living in Australia, "not only by reason of the higher cost of some of life's necessaries, but also by reason of the increased comfort of living and the higher standard of social conditions which the general sense of the community in Australia allows to those who live by labour."[4] In a world-wide market and rejecting abnormal conditions, the rates paid on ordinary British steamers of a regular trading line sailing out of a British port would serve as the standard of market value. The rates of pay on the respondents' vessels were considerably above this standard, except in the case of masters. Here the comparison was against Australian shipping. For the rest, the relation between the wages of sailors and firemen in the Australian trade and in the British trade furnished a rough guide to the proportion of a wage to be fairly attributed to Australian conditions, and practically this ratio, applied to the case of masters and officers, might serve also as a guide to whether the pay of Australian officers was fair and reasonable.[5] Then, before finally fixing the wage, there remained three other aspects of the question—the financial position of the shipping companies, the amount and nature of the competition against them and the prospects of their trade during the term the award was to be in force. The first consideration might be disregarded in the present case, the respondents having admitted their ability to pay any wages likely to be fixed. The second was important, because the competition was to some extent with oversea ships which, whether or not they might be made subject to the Court's jurisdiction and bound by its awards, were not parties to the present case. As to the third point, Australian shipping was expanding; but in face of competition, reductions in freight had been made, and the companies must not be unduly hampered in this direction. Taking all the things into consideration, the learned President came to the conclusion that wages should be raised, but that while Australian shipowners were more than holding their own, it would be unwise to fix a rate which would seriously increase the pay-sheet. As a guide to the actual rate of wage that was fair and reasonable, he got great practical assistance from an agreement between owners and officers in New Zealand, where the conditions were very similar to those in Australia, and where the agreement was not a mere bargain made under competitive conditions, since there was in New Zealand an Industrial Court with full power to determine what was a fair and reasonable wage.

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[1] *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association*, (1906) 1 Commonwealth Arbitration Reports, p. 27.

[2] *Ibid.* p. 25. [3] *Ibid.* p. 25. [4] *Ibid.* p. 27. [5] *Ibid.* p. 30.

In *Ex parte H. V. McKay*,[1] the President (Higgins J.) had to determine in the case of the respondent's works what were fair and reasonable conditions of remuneration of labour, for the purpose of ascertaining whether the respondent was entitled to remission of excise duties under the Excise Harvester Act, 1906. The case is interesting because the question was in relation to unskilled labourers.

In the case of unskilled labour, it is pre-eminently true that the higgling of the market is not to be the sole guide; the legislation aims not merely at the prevention and settlement of disputes, but also at the establishment of some decent minimum: it is directed against sweating. This leads to a consideration of the "living wage," and the learned President defines "fair and reasonable" in the case of this class of labour as "the normal needs of the average employee regarded as a human being living in a civilised community."[2]

He proceeds: "I have invited counsel and all concerned to suggest any other standard, and they have been unable to do so. If instead of individual bargaining we can conceive of a collective agreement—an agreement between all the employers in a given trade on the one side, and all the employees on the other—it seems to me that the framers of the agreement would have to take as the first and dominant factor the cost of living as a civilised being. If A lets B have the use of his horses on the terms that he gave them fair and reasonable treatment, I have no doubt that it is B's duty to give them proper food and water, and such shelter and rest as they need; and as wages are the means of obtaining commodities, surely the State in stipulating for fair and reasonable remuneration for the employees means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards. This then is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as fair and reasonable in the case of unskilled labourers.[3] And again: "I cannot think that an employer and a workman contract upon an equal footing, or make a fair agreement as to wages, when the workman submits to work for a low wage to avoid starvation or pauperism (or something like it) for himself and his family; or that the agreement is reasonable if it does not carry a wage sufficient to ensure the workman food, shelter, clothing, frugal comfort, provision for evil days, etc., as well as reward for the special skill of an artisan, if he is one." A fair and reasonable wage is thus more than a wage sufficient to keep body and soul together.[1]

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[1] Commonwealth Arbitration Reports (1907), p. 1.

[2] *Ibid.* p. 3.

[3] *Ibid.* pp. 3-4.

The minimum wage being thus determined, serves as a standard for checking the fair and reasonable wage of the higher grades in the trade—"the ratio of wages paid by an employer is a tolerably safe guide as to the relative merits of the . . . classes, although the absolute amount may be too low."[2] Men of special skill or special qualification might be left to obtain such additional remuneration as they could by agreement with the employer.

The relevance of the profits of a business to the reasonable wage is one as to which there was some misapprehension. In McKay's case Higgins J. declined to enter into the question of the profits made by the respondent, on the suggestion that a "fair and reasonable" wage imported a high rate of wage in cases where profits were high. He added: "Fair and reasonable remuneration is a condition precedent to exemption from the duty, and the remuneration of the employee is not made to depend on the profits of the employer. If the profits are nil, the fair and reasonable remuneration must be paid; and if the profits are 100 per cent., it must be paid. There is far more ground for the view that, under this section, the fair and reasonable remuneration has to be paid before profits are ascertained—that it stands on the same level as the cost of the raw material of the manufacture."[3] From these observations it was inferred by some that the question what wage rate an industry could bear must be excluded in fixing the wage. This view was shown to be incorrect in the Marine Cooks case.[4] The profit capabilities of an industry, as distinguished from the profits of a particular employer (who may be thriftless or incapable), are relevant. The cases in which the Court had had to consider the living wage were cases in which the employers had admitted that under the present condition of prosperity no difficulty arose on that score. If the question should arise, a close investigation of the financial position would be necessary.

In the Broken Hill Proprietary case[5] the question of the bearing of profits on wages had to be considered, and is entered upon by the learned President, when, having fixed the "living wage" for unskilled labour, he came to the higher wage to be paid for skill. Here the line taken—and the Court is in agreement with the South Australian and the West Australian Courts in this particular—is that the living wage is "sacrosanct" for all classes of employees. If an industry cannot pay the price, it had better stop, and let the workers be absorbed by other industries. But beyond the living wage, the price to be paid for skill is much nearer to the line at which the parties can bargain on equal terms, and it is at this stage that the profits of an industry, though not the particular conditions of a particular employer, are to be considered. The respondents in the present case contended that owing to the conditions of their mine they were unable to pay wages which might be regarded as proper from the fact they were paid by nine of the principal mines in Broken Hill. Nothing was more dangerous to industrial peace than difference of condition in the same place among the people in the same class of employment under similar conditions. The learned President could not see justice or expediency in the respondents' claim for special treatment.[1] He realised the serious position if the mine had to stop work; but in any case this result could not long be postponed, and the stoppage, if it took place, and the loss of employment by thousands of men, would really not be attributable to the award but to the deficiency of payable ore. The proposals submitted by the company widened the recognition of the claims of skill to a higher remuneration than the minimum by reducing the "living wage" of unskilled labour. The Court could not make an award recognising such a scale. "I face the possibility of the mine remaining closed, with all its grave consequences; but the fate of Australia is not dependent on the fate of any one mine, or of any one company; and if it is a calamity that this historic mine should close down, it would be a still greater calamity that men should be underfed or degraded."

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[1] Commonwealth Arbitration Reports (1907), p. 16.

[2] Cf. p. 16. The same course was followed in the Marine Cooks case, 2 C.A.R. p. 55.

[3] Commonwealth Arbitration Reports, p. 5.

[4] C.A.R. at p. 64.

[5] March 12, 1909.

The principle of the living wage, restated and applied in the Broken Hill Proprietary case[2]—"the normal needs of the average employee regarded as a human being living in a civilised community"—is declared in the Australian Boot Trade case[3] to have been accepted without serious adverse criticism. Having ascertained that wage, the course of the Court was in any claim before it to consider the grounds on which claimants based their demand for something higher than labourers' wages, and also to consider in that connection any grounds, including grounds of finance, of competition, of unfairness to other workers, of undue increases of price, of injury to the public, etc., on which the employers opposed the claim.

An interesting point has been raised as to the relevance of injurious, disagreeable, or degrading conditions under which some employments have been alleged to be carried on. As to this, the learned President held that in fixing remuneration he might take into account such of these conditions as were necessarily incident to the employment, but not such as were preventible. "A man who works for wages sells his labour—not his life or his health; and if he submit to unnecessarily injurious and degrading conditions for the sake of higher wages, he soon finds that such conditions become permanent, and that any increase of wages based thereon is temporary." The conditions spoken of, if they existed, were best dealt with by statutory provisions; the award as to wages would be based on the assumption that the men were properly treated.[1]

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[1] March 12, 1909, p. 19.

[2] March 12, 1909.

[3] November 19, 1909, p. 8.

In the Broken Hill case,[2] the Court found that the conditions of work and life in the district were arduous, disagreeable, and even dangerous to health, notwithstanding that the company was shown to have made all reasonable efforts to counteract them. They thus became a legitimate element in determining the wage.

Finally, it is to be noted that the Court repudiates the suggestion that it is to control in detail the employer's business. "My principle is to interfere as little as possible with employers in the administration of their business, to interfere only so far as to protect human lives from the undue pressure which profit-making often involves, and as to rectify, in the interests of industrial peace, matters of grave injustice."[3]

[1] The Marine Cooks case, 2 C.A.R., at pp. 60-61.

[2] March 12, 1909.

[3] Marine Stewards case, May 10, 1910, p. 13. See also Australian Boot Trade case, November 19, 1909, p. 16.

CONDITIONS OF ADMISSION TO THE LEGAL PROFESSION THROUGHOUT THE BRITISH EMPIRE.

[*Contributed by* C. E. A. BEDWELL, ESQ.[1]]

Introductory.—In the consideration of the conditions of admission to the legal profession throughout the British Empire it cannot escape attention that the Inns of Court hold a unique position by exercising a right of which they have been in possession for more than four hundred years. The source from which it was derived is unknown, and neither it nor the constitution of the Inns has ever been affected by an Act of the Crown or Parliament. In the Canadian provinces have been constituted by statute law societies modelled to some extent upon the Inns of Court, and adopting the same nomenclature for their governing authorities. Like the Inns, the law societies accept the qualification of an external body for their standard of general education, while retaining to themselves the testing of professional ability. In the Australian States it would seem that the latter is more directly under the control of the judges of the Supreme Courts. The legal profession in South Africa is sharing in the general state of transition, but in one respect differs both from Canada and Australia. There is a marked desire to keep distinct the two branches of the profession. In the Cape of Good Hope, it may be noted,[2] the university has superseded a board of examiners in testing academic legal qualifications. In India the theoretical part of the legal training is provided and tested almost entirely by the universities. The Crown Colonies emphasise the extent to which the Bar is a bond of empire, though Ashanti appears to have an objection to the legal profession.

England.—*Barristers.*—There is no legislative enactment respecting the conditions of admission to practise as counsel in England. The right call to the Bar, which is the necessary preliminary, is possessed by the four Inns of Court,[3] which are voluntary societies independent of the State. The conditions as to the admission of students, the mode of keeping terms, the education and examination of students, the calling of students to the

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[1] The writer is indebted to numerous correspondents who have forwarded official documents which are now preserved for reference in the Middle Temple Library.

[2] See *infra*, p. 226.

[3] The admission to the Bar is the act of the Inn of Court, and is complete when the party is so admitted (*In re Perara*, (1887) 3 *Times* L.R. 677).

Bar, and the taking out of certificates to practise under the Bar are contained in the Consolidated Regulations issued by the four Inns. The applicant for admission to an Inn of Court is required to make a comprehensive declaration, including age, parentage, intention to practise, that he is not in possession of any one of a number of legal offices nor engaged in trade.[1] It is necessary that he should have passed an examination of a standard not lower than the Oxford and Cambridge Senior Local.[2] The application must be accompanied by certificates as to character, if he resides permanently in the United Kingdom, from two responsible persons; if he does not, but is at college, from a responsible person and head of his school or college, or from his tutor. Applicants from beyond the seas must have, if natives of India, a certificate from the collector or deputy commissioners of the district in which his family reside, or if resident in a native state from the political officer there representing the Indian Government; if he is not a native of India he must have a certificate from a judge, magistrate, or other person holding a similar position in the place or district in which the applicant is a resident.[3] The certificate must be in a prescribed form, testifying to personal knowledge of the applicant and his character, and that he is a proper person to be admitted to an Inn of Court.[4] Before being called to the Bar he must keep twelve terms [5] by dining in the hall of his Inn on six days of each term,[6] be twenty-one years of age,[7] and have passed an examination to the satisfaction of the Council of Legal Education.[8] Members of a university are only required to dine on three instead of six days in each term.[9] Under special circumstances a reduction of not more than two may be made in the number of terms.[10]

The members of certain bodies may be called to the Bar upon special conditions. Solicitors admitted in England who have practised either in England or any part of the Empire may be called after passing the examination without keeping terms, and upon condition of entirely relinquishing that branch of the profession.[11] Members of the Irish Bar of three years' standing may be called upon keeping three terms and without examination.[12] Similarly members of the Bar in other parts of the Empire where the two branches of the profession are distinct—New South Wales, Ceylon, and Cape Colony—may be called to the English Bar on the same conditions.[13] A vakil of a High Court of India shall not be required to pass any examination, and if he has studied in a barrister's chambers for twelve months may be granted a dispensation of four terms.[14]

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[1] Rule 5.
[2] Rule 2 and Schedule.
[3] Rule 7.
[4] Rule 8.
[5] Rule 21.
[6] Rule 13.
[7] Rule 20.
[8] Rule 22. The examination includes Roman law, from which the candidate may be exempted if he has passed a university examination on the subject, constitutional law, criminal law and procedure, real property and conveyancing, in lieu of which he may take Hindu and Mahomedan law or Roman-Dutch law.
[9] Rule 12.
[10] Rule 21.
[11] Rule 15.
[12] Rule 17.
[13] Rule 18.
[14] Rule 19.

Solicitors.—The admission of solicitors is conducted by the Law Society, nder the authority of the Solicitors Act, 1888,[1] and the rules made there-nder by the Master of the Rolls.[2] The applicant must be a British subject, nd before he can be enrolled must be twenty-one years of age and have assed certain examinations. The preliminary before entering into articles a test of general knowledge, and exemption may be obtained by applicants ho have passed one of the specified examinations, of which the standard is ot lower than the school-leaving examination of the Oxford and Cambridge chools Examination Board. The usual period for service under articles five years, but for graduates of universities, who are exempted from the reliminary examination, and for barristers of less than five years' standing, e period is three years. Applicants who have passed one of certain specified xaminations need serve only for four years. Members of the Faculty of dvocates, writers to the signet and solicitors in the Supreme Court, and rocurators before any of the Sheriff Courts, serve for three years. Barristers f five years' standing may be enrolled upon passing the final examination ithout serving articles of clerkship.[3]

The intermediate examination consists of two parts—(1) law, and 2) accounts and book-keeping. The degree of B.C.L. or LL.B., or onours in the Final Honour School of Jurisprudence at Oxford, or the aw Tripos at Cambridge, will exempt the applicant from the former. The nal examination is in the law of real and personal property, the practice of onveyancing, the principles of law and procedure in matters usually deter-ined or administered in the Courts of Chancery, King's Bench, Probate, ivorce, and Admiralty, ecclesiastical and criminal law and practice, and roceedings before justices of the peace.

The Colonial Solicitors Act, 1900,[4] regulates the admission of solicitors om other parts of the Empire. Solicitors of three years' standing in places here the regulations secure that they possess "proper qualifications and ompetency,"[5] may be admitted without examination if reciprocal privileges re granted to English solicitors. The Act is applied by Order-in-Council the parts of the Empire satisfying the conditions.[6]

Scotland.—*Advocates.*—Upon a petition presented by the "intrant" the ourt of Session issues a "remit" that he may be admitted to examination y the Faculty of Advocates. He is exempt from an examination as to eneral scholarship if he is Master of Arts of any Scottish university or an quivalent university degree or the degree of B.A., B.C.L. or Bachelor f Laws in any English university, Trinity College, Dublin, or the Royal

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[1] 51 & 52 Vict. c. 65.

[2] Statutory Rules and Orders (revised 1903), vol. xi. ("Solicitor, England") p. 12.

[3] 40 & 41 Vict. c. 25, s. 12.

[4] 63 & 64 Vict. c. 14.

[5] *Ibid.* s. 2.

[6] For a list, see index to Statutory Rules and Orders in force December 31, 1909, and ibsequent annual volumes of Statutory Rules and Orders.

University of Ireland.[1] If the intrant is not a graduate he is examined by the Faculty of Advocates as to his general knowledge.[2] With the view to securing to the intrant a period for undisturbed application to the study of the law before being admitted to practise, he is not to engage in any work, business or profession, either as principal or employee, for one year before being examined in law. This rule does not prevent an intrant from being a pupil under a member of Faculty during the year.[3] The possession of the degree of LL.B. exempts the intrant from being examined in the law by the Faculty, but he must have complied with the rule as to engaging in any other work.[4] The possession of a similar degree of an English university or Trinity College, Dublin, or the Royal University of Ireland may also entitle the intrant to exemption.[5] The examination of the Faculty consists of Civil Law; Philosophy of Law and International Law—Public and Private; Constitutional Law and History; Medical Jurisprudence; Scots Law, Civil and Criminal, including Procedure, and Conveyancing.[6] Having satisfied the examiners in the written portion the intrant is required to defend a thesis on a title of the Pandects; and having accomplished that satisfactorily he may then be admitted to the Faculty.[7]

Writers to the Signet.—The Writers to the Signet form the principal and most numerous body of solicitors in Scotland, and hold the highest rank in the profession. The Society of Writers to the Signet is a very ancient body having by long custom the rights of a corporation.[8] No one can be admitted to the Society without having been apprenticed to a member. The period of indenture is five years, and the age for entering into indenture not under eighteen. In a case of applicants over the age of nineteen, and holding a degree in arts or law of a university of Great Britain or Ireland, the period of indenture may be three years.[9] Applicants without a degree are required to pass the Law Agents' Examination in general knowledge and an examination in book-keeping.[10] During indenture the intrant must attend four courses of Law in a Scottish university—viz. one of Civil Law, one of Scots Law, one of Conveyancing, and a second course of any one of these; but the holding of the degree of LL.B. entitles to exemption from the last. He must also pass an examination in book-keeping.[11] Before being admitted as a Writer to the Signet the applicant is required to pass an examination in the theory and practice of the law, partly written and partly oral.[12]

Law Agents.—The term "Law Agent" is defined to include "writers to the signet, solicitors in the Supreme Courts, procurators in any Sheriff Court, and every person entitled to practise as an agent in a court of law in Scotland."[1] Admission is by apprenticeship under a written indenture for a period of five years, reduced to three in the case of (*a*) clerks to law agents who have been engaged in that work for a period of five years, (*b*) holders of a degree in Law or Arts in any university in Great Britain or Ireland, (*c*) members of the Faculty of Advocates, (*d*) English barristers or solicitors.[2] There are two examinations in general knowledge. Exemption from the first may be obtained by the holder of a leaving certificate or intermediate certificate of the Scotch Education Department, English equivalent or a degree in any university in Great Britain or Ireland, and by advocates and English barristers and solicitors.[3] Exemption from the second examination in general knowledge and book-keeping may be claimed by possessors of the higher certificate of the Scotch Education Department or its equivalent of the Oxford and Cambridge Schools Examination Board in the subjects to which they apply. Finally, before admission as law agents an examination must be passed in Law, namely, the Law of Scotland, Civil and Criminal, Conveyancing, Forms of Process, Civil and Criminal. The possession of the degree of Bachelor of Laws will exempt from the examination except the last portion[4] unless it did not include the Law of Scotland and Conveyancing, when the examiners will require to be satisfied in those subjects.[5]

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[1] Regulations as to intrants approved by the Faculty of Advocates upon January 6, 1909, Art. 7.

[2] *Ibid.* Art. 8.

[3] *Ibid.* Art. 10.

[4] *Ibid.* Art. 13.

[5] *Ibid.* Art. 17.

[6] *Ibid.* Art. 12.

[7] *Ibid.* Arts. 20-22.

[8] See Encyclopædia of Scots Law, *sub tit.* "Writers to the Signet."

[9] Regulations respecting apprentices and intrants to the Society of Writers to His Majesty's Signet.

[10] *Ibid.* Regulation II.

[11] *Ibid.* Regulation VI.

[12] *Ibid.* Regulation VII.

Ireland.—*Barristers.*—Any person who has passed a public examination at any university within the British Dominions or for the first class of the Home, Colonial, or Indian Civil Service, or for the Consular Service, or is a student of an Inn of Court, may be admitted as a member of the Honorable Society of King's Inns.[6] Otherwise before admission the applicant must pass an examination in the English and Latin languages and English history and literature.[7] No attorney at law, solicitor, writer to the signet, or writer of the Scottish Courts, proctor, notary public, parliamentary agent, or agent, and no apprentice, clerk or assistant of any of them, shall be admitted a student until he has entirely ceased to act or practise in that capacity.[8] Every student must keep twelve terms, for four of which may be substituted terms at an English Inn of Court.[9] The period of study is for three years. In the first the student attends lectures in the Law School of Trinity College, Dublin.[10] In the second year he attends lectures by the Professors of Law at the King's Inns, for which students at Trinity College may substitute attendance at the Honour Lectures of the Professors in the Law School of Trinity College.[11] The third year's study consists of attendance at lectures of the Professors of Law at the King's Inns.[1] In the place of one of the first two years may be accepted a year's work in chambers in England with attendance at lectures of the Inns of Court,[2] and for the third year, if the student has not availed himself of the previous alternative, the like attendance with the certificate of fitness for call to the Bar.[3] A year's attendance at a Law School of any university (other than Dublin) or college may be accepted in the place of the first year's legal education.[4] Having completed the three years' course and passed the examinations satisfactorily the student may be called to the Bar.[5] English barristers of three years' standing may be called to the Irish Bar upon keeping the terms without submitting to any examination.[6] Irish solicitors of five years' standing may be called to the Bar upon passing an examination in three subjects at least at the Honour Examination at the King's Inns, without keeping any terms.[7]

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[1] 36 & 37 Vict. c. 63, s. 1. The text of the statutes and Acts of Sederunt is contained in the *Parliament House Book.*

[2] *Ibid.* s. 5.

[3] Regulations by Act of Sederunt, March 18, 1893.

[4] *Ibid.*

[5] Act of Sederunt, December 23, 1904.

[6] Rule V. with regard to the admission of students into the Society.

[7] Rule VII.

[8] Rule VI.

[9] Rule VIII.

[10] Rule XII.

[11] Rule XIII.

Solicitors.—Intending apprentices must be sixteen years of age,[8] and have passed a preliminary examination unless they hold a first-class certificate of the College of Preceptors or its equivalent.[9] The period of service under indentures is five years except under certain conditions.[10] For graduates of universities[11] or barristers of less than five years' standing[12] it is three years. Barristers of five years' standing may be admitted after passing the final examination.[13] Clerks to solicitors "who have faithfully, honestly, and diligently served as such clerk" may be admitted after indenture for three years.[14] The passing of the degree of B.A. after the beginning of the period of articles secures a reduction of one year,[15] which may also be obtained by attendance at a two years' course of lectures in the Faculty of Law of a university.[16] Apprentices not under a special exemption are required to attend a two years' course of lectures.[17] The possession of the degree of B.C.L. or LL.B. will secure exemption from the intermediate examination,[18] but all must pass the final examination[19] before admission, which cannot be before the age of twenty-one years.[20]

Isle of Man.[21]—The conditions of admission to the legal profession[22] are as follows: A candidate is required to serve five years in the Rolls Office or as articled clerk to an advocate, unless he is the holder of a degree of B.A. or LL.B. of Oxford, Cambridge, Durham, Dublin, London, or Queen's University, Ireland, or of B.A., M.A., LL.B., or LL.D. of any university in Scotland. Before a student can be articled it is necessary that he should obtain the consent of the Lieutenant-Governor. This is usually done by memorial, and the practice for many years past has been for the Governor to refer the memorial to the Isle of Man Law Society to inquire as to the fitness and character of the memorialist. Certificates of character are required by the Law Society, and the candidate must also have passed the London Matriculation or other similar examination, or a special examination conducted by the Law Society. In addition to this preliminary examination there are two other examinations—the intermediate and final. At the intermediate examination, in addition to questions on law, questions on book-keeping are generally asked. A candidate's memorial and articles are required to be enrolled in the Rolls Office. On the completion of his articles and passing of his final examination, the student then petitions the Governor to be licensed as an attorney, solicitor, and advocate. This petition is also, as a matter of practice, referred to the Law Society. Upon the commission to practise being granted, a fee of £50 is payable to the Isle of Man Law Society. Not more than four clerks may be articled at one time to the Clerk of the Rolls, and not more than two at any one time to any advocate. A holder of any of the degrees mentioned above is required to serve three years only instead of five. Power is conferred upon the Governor to license any English barrister to practise as an attorney, solicitor, and advocate in the Isle of Man on payment of the fees above mentioned. As a matter of practice this power has only been exercised to admit English barristers connected by family or residence with the Isle of Man, and the Governor usually makes a condition that such barrister shall read with a practising advocate for a period of at least one year.

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[1] Rule XIV.
[2] Rule XV.
[3] Rule XV.
[4] Rule XVI.
[5] Rule XXX.
[6] Rule XXXII.
[7] Rule VI.
[8] Regulation X. made by the Incorporated Law Society.
[9] 61 & 62 Vict. c. 17, s. 17.
[10] *Ibid.* s. 11.
[11] *Ibid.* s. 12.
[12] *Ibid.* s. 13.
[13] *Ibid.* s. 29.
[14] *Ibid.* s. 16.
[15] *Ibid.* s. 14.
[16] *Ibid.* s. 15.
[17] Regulation XV.
[18] Regulation XXV.
[19] 61 & 62 Vict. c. 17, s. 26.
[20] Rules of the Incorporated Law Society.
[21] Kindly contributed by the Attorney-General.
[22] See Attorneys' Fees Act, 1777 (Gill's Statutes (Isle of Man), vol. i. p. 335), the Attorneys Act, 1826 (Gill's Statutes, vol. ii. p. 1), and the Advocates Act, 1874 (Gill's Statutes, vol. iv. p. 344).

Jersey.—*Avocats.*—The number of avocats entitled to practise at the Bar of the Royal Court of Jersey was formerly limited to six,[1] but the restriction was removed by the States, confirmed by Order-in-Council January 23, 1860. The existing law on the subject was confirmed by Order-in-Council May 9, 1892.[2] Every candidate for admission to the Bar must be a British subject, twenty-one years of age, and have lived for ten consecutive years in Jersey.[3] He must either be an English barrister or a graduate in laws in the University of France. He must also pass an examination in the Droit Normand, the laws of Jersey, the English Commercial Law, and the practice of the Jersey Royal Court.[4] Before undergoing the examination, he must show that he has a degree in law or arts of an English, Scottish, or Irish University, be a Bachelier-ès-Lettres of the University of France, or have practised for five years as an écrivain before the Courts of the island.[5]

Ecrivains.—British subjects twenty-one years of age can be admitted to practise as écrivains if in possession of certain general and legal qualifications. As to the former, he must have passed Oxford or Cambridge Senior Local, an equivalent of the College of Preceptors or London matriculation. In addition, he must have spent five consecutive years with an avocat or écrivain. If he is a Bachelor in Arts or Law of a university in Great Britain or Ireland, or a Bachelier-ès-Lettres or Bachelier-ès-Sciences of the University of France, the period of legal training is reduced to three years.[1] But in either case before admission to practise he must pass an examination in the Laws and Customs of Jersey and the practice of the Courts.

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[1] *D'Allain* v. *Le Breton,* (1857) 11 Moo P.C. 64.

[2] Recueil des Lois, iv. 228.

[3] Loi, 9 Mai 1892, Art. 1.

[4] *Ibid.* Art. 2.

[5] *Ibid.* Art. 3.

Guernsey.—*Avocats.*—Members of the Bar must have either been born in the island or resided there at least five years after reaching the age of ten.[2] He must be a B.A. of one of the universities of the United Kingdom or a B.-ès-L. of the University of France, and have besides a Law degree at the latter University or be a Doctor of Laws of the University of Caen.[3] Barristers-at-law of the English Inns of Court must also hold one of the latter degrees.[4] All candidates for admission to the Bar must pass an examination in the Laws of Guernsey and the procedure and practice of the Royal Court.[5]

Ecrivains.—Candidates for admission to the Corps des Ecrivains must be twenty-five years of age and have been for five years in the chambers of an avocat or écrivain. The candidate must pass an examination before admission.[6] The number of écrivains is limited to eight.[7]

NORTH AMERICA.

Canada.—Barristers, advocates, counsel, attorneys, solicitors, and proctors in any of the provinces may practise in the Supreme Court.[8]

Alberta.—The right to practise as a barrister or solicitor is obtained by enrolment as members of the Law Society,[9] of which the governing body is described as Benchers.[10] Any British subject of full age who has been a student-at-law for five years, or if a graduate for three years, may be enrolled upon showing himself to be of good character and reputation, and complying with the rules of the Society. Any person who has been called to the Bar or is an advocate, writer to the signet, attorney, or solicitor in England, Scotland,

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[1] Loi, 29 Jan. 1891, Art. 2; *ibid.* Arts. 1, 7.

[2] Ordonnance relative au Barreau, 5 Oct. 1903, s. 2.

[3] Ordonnance Provisoire Supplémentaire à l'Ordonnance relative au Barreau, 3 Fév. 1906.

[4] Ordonnance, 5 Oct. 1903, s. 2.

[5] *Ibid.* s. 3.

[6] Ordonnance Provisoire Supplémentaire à l'Ordonnance relative au Corps des Ecrivains, 11 Avril 1904.

[7] Ordonnance relative au Corps des Ecrivains, 25 Avril 1870; Recueil d'Ordonnances, tome iv. p. 101.

[8] Revised Statutes, c. 139, ss. 24, 25.

[9] 7 Ed. VII. c. 20, s. 46.

[10] *Ibid.* s. 7.

Ireland, or any province of the Dominion may be enrolled subject to any condition which may be imposed upon members of the Society.[1] The Benchers have also a power to admit any British subject of full age "who is a legal practitioner in any of His Majesty's dominions beyond the seas or in any foreign country."[2]

British Columbia.—Admission as a barrister is open to any British subject of full age who has been for five years on the books of the Law Society, and during that period has been in actual attendance at the chambers of a practising barrister, or for three years if he be a B.A. or M.A. or Bachelor or Doctor of Laws in any recognised university in Great Britain or Ireland or the Dominion of Canada.[3] Any barrister of England, Ireland, His Majesty's colonies, dependencies, or provinces of Canada, or advocate in Scotland may be admitted to practise after six months' residence, for which period also his name must be upon the books of the Society, and for two months immediately preceding his call he must advertise notice of his application in the *British Columbia Gazette.* Provided that if he comes from outside the Dominion of Canada he must pass an examination in the statute law of Canada and the province and the practice of the Courts; if he comes from another province of the Dominion, he must pass an examination in the provincial law and practice; if he comes from a part where the English common law does not prevail, then, in addition, he must pass an examination in the common and statute law of England applicable to the province, and give evidence of his fitness to practise as a barrister.[4] *Mutatis mutandis*, the conditions are the same for the admission of solicitors.[5]

Manitoba.[6]—Provision is made for any judge of a superior Court of the Dominion or a County Court of the province who may have resigned or been superannuated to resume practice at the Bar without examination or formality.[7] Any barrister of another part of Canada granting reciprocal arrangements is entitled to be called upon production of his testimonials,[8] and also any member of the bars of England, Ireland, or Scotland.[9] Students must follow a course of study for five years,[10] reduced to three years for any person who has taken the degree of Bachelor or Master of

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[1] 7 Ed. VII. c. 20, s. 34.

[2] *Ibid.* s. 35.

[3] Revised Statutes, 1897, c. 24, s. 37 (3) (*a*).

[4] *Ibid.* s. 37 (3) (*b*).

[5] *Ibid.* s. 37 (4).

[6] "Admission to the Manitoba Bar costs about $225 or £45 to a man who qualifies on the spot, and there are no incidental expenses in the way of dinners and dues. The examinations are, except possibly the final, comparatively easy, and for every subject which would be required at home a single book is usually sufficient. There is no doubt, however, that the standard of examinations must be raised in the near future, or the profession will be overcrowded with uneducated and incompetent men."—*Times Educational Supplement*, August 1, 1911.

[7] Revised Statutes, 1902, c. 95. s. 62 (*a*).

[8] *Ibid.* s. 62 (*b*).

[9] *Ibid.* s. 62 (*c*).

[10] *Ibid.* s. 62 (*f*).

Arts, Bachelor of Law in any university of Great Britain or Ireland or the Dominion, or Bachelor of Science in agriculture of any university or college in Manitoba.[1] Provision is made for the admission without examination of any person who was called to the Bar in another province and has practised as an attorney in Manitoba,[2] and for an attorney of twelve years' standing in Manitoba.[3] A solicitor in any part of the Empire in which the legal education is equal to the requirements of the Law Society of Manitoba, who has been admitted a solicitor in Manitoba, may be admitted to practise at the Bar on passing the final examination.[4] *Mutatis mutandis*, the conditions of admission of solicitors are the same.[5]

New Brunswick.—It is entrusted to the Barristers' Society to regulate the admission of persons to the study of the law and to practise.[6] The Attorney-General, the President of the Barristers' Society, and such other members as may be appointed by the Council are members of the Board of Examiners of the School of Law in the University of King's College.[7] Any possessor of the degree of Bachelor of Civil Law of that University is entitled to admission as an attorney without examination.[8] The two branches of the profession are not distinct and the attorney may proceed to become barrister after an interval of practice. Women are admitted to the practice of the law on the same terms as men.[9]

Nova Scotia.—Every person entitled to be admitted as a solicitor is also entitled to be admitted as a barrister.[10] Admission is by serving a period of articles of clerkship following a preliminary examination if the applicant has not passed an examination accepted by the Council of the Barristers' Society.[11] The period of service is for four years, except for possessors of the degree of Bachelor of Arts or Laws in a recognised university, when it is reduced to three years.[12] While serving his articles the articled clerk must pass examinations,[13] and cannot be admitted to practise until he is twenty-one years of age.[14] A barrister of Great Britain and Ireland may be admitted to practise on producing the necessary evidence.[15] A solicitor in Great Britain or Ireland must have served the same period of articles as required in the province and pass the final examination before he can be admitted, as also must a barrister, attorney, or solicitor of any superior Court in the colonies, unless there are reciprocal arrangements for the admission of barristers.[16]

Ontario.—The control of legal education and the admission both of barristers and solicitors are in the hands of the Treasurer and Benchers of the Law Society,[1] and the statutory conditions of admission to the profession may be qualified by any rules made by them.

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[1] Revised Statutes, 1902, c. 95, s. 62 (*g*); 1 Geo. V. c. 23, s. 4.

[2] Revised Statutes, 1902, c. 95, s. 62 (*h*).

[3] *Ibid.* s. 62 (*i*).

[4] 6 & 7 Ed. VII. c. 22, s. 9.

[5] Revised Statutes, 1902, c. 95, s. 54; 6 & 7 Ed. VII. c. 22, s. 8; and 1 Geo. V. c. 23, s. 3.

[6] Consolidated Statutes, 1903, c. 68, s. 13.

[7] *Ibid.* s. 14.

[8] *Ibid.* s. 15.

[9] 6 Ed. VII. c. 5.

[10] Revised Statutes, 1900, c. 164, s. 16.

[11] *Ibid.* s. 7.

[12] *Ibid.* s. 12.

[13] *Ibid.* s. 12.

[14] *Ibid.* s. 11.

[15] *Ibid.* s. 13.

[16] *Ibid.* s. 13.

Barristers.—The following are entitled to admission:

(1) Any person of the age of twenty-one years who has been a student under the auspices of the Law Society for five years.
(2) Any Bachelor of Arts or Law of a University of Great Britain or Ireland, Ontario, or Quebec who has been a student for three years.
(3) Any member of the Bars of England, Scotland, or Ireland if reciprocal privileges are granted to barristers from Ontario.
(4) Any member of the Bar of Quebec.
(5) Any member of the Bar of the other Canadian provinces if reciprocal admission is allowed to barristers from Ontario.[2]
(6) Solicitors of ten years' standing without examination.
(7) Solicitors of more than five but less than ten years' upon passing examination prescribed by the Society.[3]

Solicitors.—The persons entitled to admission as solicitors are those who have served a period of articles for five years, reduced to three for Bachelors or Masters of Arts or Bachelors or Doctors of Laws of any University of Great Britain or Ireland, Ontario, or Quebec; any barrister of Ontario or the United Kingdom who has served with a solicitor for three years; or solicitor in the United Kingdom or colony where the English Common Law prevails who has served for one year.[4] Barristers who have been in practice for ten years may be admitted without examination, and for more than five but less than ten upon passing an examination prescribed by the Law Society.[5]

Prince Edward Island.—The admission to the legal profession is controlled by the Law Society, incorporated by Act of the General Assembly.[6] Before being admitted to study the law, candidates are required to pass an examination to secure a standard of general knowledge. The "student-at-law" is articled to a barrister, and must pass an examination at the expiration of two years of his articles, a second at the end of three and a half years, and the third after four and a half years. For "students-at-law" who hold a B.A. degree the total period is reduced by one year.[7] The Supreme Court admits the student to practise after being satisfied of his fitness. After the expiration of one year from the time of admission as an attorney it is lawful for any attorney of the Supreme Court to be called to the Bar, provided there appears to the Court no just cause to prevent such call.[1]

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[1] Revised Statutes, 1897, c. 172, s. 38.

[2] *Ibid.* c. 173, s. 1.

[3] *Ibid.* c. 173, s. 2.

[4] *Ibid.* c. 174, s. 4.

[5] *Ibid.* c. 174, s. 5.

[6] 39 Vict. c. xxiv.

[7] Any student while articled to any attorney in the province may attend approved law schools out of the province, and the time spent thereat may be deemed as part of the apprenticeship (47 Vict. c. xii.). For the rules and regulations regulating examination of law students the writer is indebted to F. L. Haszard, Esq. K.C.

Quebec.—The examination of candidates for the study and practice of the profession is under the control of the General Council of the Bar.[2] The Bars of the two sections—Montreal and Quebec—are required to associate with their examiners a professor of the law faculties of the colleges within their area if no professor of any such faculty is otherwise chosen to be one of the Board of Examiners. The holder of a degree of Bachelor of Arts, Science, or Letters conferred by any Canadian or British University may be admitted to study for the Bar. Without a degree he must pass an examination in two groups of subjects, somewhat loosely called "letters" and "sciences." The period of clerkship is five years if the student at the same time is attending law lectures at the University, and otherwise four years. The course of study is 750 lessons of one hour each, divided thus: Roman Law, 103; Civil, Commercial, and Maritime Law, 413; Civil Procedure, 103; International Law, Public and Private, 21; Criminal Law, 69; Administrative and Constitutional Law, 41. Before being called to the Bar he must pass an examination. There is no difference between an advocate and solicitor.[3]

Saskatchewan.—There is a Law Society having control of legal education and the admission of barristers and solicitors upon the same lines as the organisations in the older provinces.[4] The course of study is for five years except for graduates in arts or law of a recognised university in any part of the British Empire or a graduate of the Royal Military College of Canada, for whom it is reduced to three years.[5] The admission of barristers or solicitors from other parts of the Empire is upon a reciprocal basis. Whatever examination or period of residence may be imposed upon members of the legal profession from Saskatchewan desiring to practise in a particular place may be required of the members of the profession coming from that place to Saskatchewan.[6] Similarly, students of law from another part of the Empire may receive the same, but not a greater, status as a student in Saskatchewan if in possession of the necessary educational qualifications.[7] But no one can be admitted to practise who is not a British subject and twenty-one years of age.[8]

Yukon Territory.—The right to admit to the practice of the legal profession is vested in the Territorial Court. It may be claimed by members of the Bar of England, Scotland, or Ireland, or any of the provinces or territories of Canada, or by any one who has served articles of clerkship for three years entitling him to be admitted in one of the provinces, or by any member of the Bar in another part of the Empire who is entitled to admission to practise in the Canadian provinces. Articled clerks who have served part of their time in one of the provinces may complete it in the Yukon Territory, or part of the time may be spent in a law school.[1] The Judge of the Territorial Court may also admit articled clerks who have spent their period of articles in the Territory, if they give evidence of adequate educational attainments and have passed a qualifying examination.[2] There is a preliminary examination annually of persons desiring to be enrolled as clerks, conducted by examiners appointed by the Commissioner of the Territory.[3]

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[1] Acts of the General Assembly (1862, vol. i. p. 556) Revised, c. xxxi. s. 12.

[2] Revised Statutes of Quebec, 1909, s. 4522.

[3] Regulations governing admission to the Bar of the Province of Quebec, by Andrew R. McMaster: American Bar Association Report, 1910, p. 829.

[4] Revised Statutes, 1909, c. 104, s. 35.

[5] *Ibid.* s. 8.

[6] *Ibid.* s. 8.

[7] *Ibid.* s. 36.

[8] *Ibid.* ss. 37, 8.

North-West Territories.—The conditions of admission to the legal profession correspond with those existing in the province of Saskatchewan.[4]

Newfoundland.—The Treasurer, who is called the President,[5] and Benchers of the Law Society regulate the admission of students-at-law, the call or admission to practise, and all other matters relating to the discipline and honour of the Bar.[6]

Barristers.—All persons to be admitted as barristers must previously have been enrolled as solicitors. Subject to that qualification they may be (1) persons who have been five years on the books of the Law Society[7]; (2) graduates in arts, law, or science of any recognised university who have been three years as students of law; (3) persons who have matriculated in any recognised university and have been students of law for four years[8]; (4) barristers of England, Scotland, or Ireland; and (5) barristers of any other part of the British Empire granting reciprocal privileges.[9]

Solicitors.—The qualifications for admission is five years as an articled clerk (reduced to three years for graduates in arts, law, or science in any recognised university) and four years for clerks who have matriculated prior to entering upon their articles or obtained the degree of Bachelor or Doctor of Laws during that period. Attendance at a law school may be reckoned as part of the period of service under articles.[10] Others qualified for admission are barristers or solicitors in England or Ireland and advocates or writers to the signet in Scotland, or barristers or solicitors from parts of the British Empire granting reciprocal rights.[11] During the period of articles the clerk must pass examinations required by the Law Society.[12]

Women have the right to be entered as clerks, admitted as law students, enrolled as solicitors, and called to the Bar.[13]

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[1] Consolidated Ordinances, 1902, c. 47, s. 4.

[2] *Ibid.* s. 8.

[3] *Ibid.* s. 13.

[4] Consolidated Ordinances, 1905, p. 595: Legal Profession Ordinance.

[5] Consolidated Statutes (Second Series), 1876, c. 54, s. 26.

[6] *Ibid.* s. 33.

[7] *Ibid.* s. 49, and 62 & 63 Vict. c. 16, s. 3.

[8] *Ibid.* s. 49, and 59 Vict. c. 19, s. 1.

[9] *Ibid.* s. 49.

[10] 59 Vict. c. 19, s. 2.

[11] Consolidated Statutes, *ubi sup.* s. 52.

[12] *Ibid.* s. 55, and 62 & 63 Vict. c. 16, s. 4.

[13] 10 Ed. VII. c. 16.

AUSTRALASIA.

Commonwealth of Australia.—"Any person entitled to practise as a barrister or solicitor, or both, in any State, shall have the like right to practise in any Federal Court."[1]

The High Court has constituted a Practitioners' Board, consisting of the Attorney-General, the secretary to the Attorney-General's department, the Principal Registrar, and certain practising barristers or solicitors appointed by the Chief Justice.[2] The applicant desirous of becoming a Federal student-at-law must be a graduate in arts, law, medicine, or science of a university in the British Dominions, or have passed a preliminary examination in general knowledge recognised by the Board.[3] If the student-at-law is a graduate in laws he is required to attend for one year[4] the sittings of the High Court held in the State in which he is from time to time present as often as it is reasonably practicable for him to do so.[5] If he is a graduate in arts, medicine, or science, the attendance must be for two years, and in any other case for three years.[6] Before admission the student-at-law must pass two examinations, unless he is exempt on account of having passed similar university examinations. A graduate in laws is exempt entirely from the preliminary and from the final with the exception of Part IV.[7]—the Constitution of the Commonwealth and the State, the Statutes of the Commonwealth, the Jurisdiction and Practice of the High Court[8]—which is conducted by examiners appointed by the Practitioners' Board.[9]

New South Wales.—The approval of properly qualified persons to be barristers is entrusted to a Board consisting of the judges, the Attorney-General, and two barristers annually elected by the practising barristers.[10] No university graduate nor a candidate who has passed two annual examinations in Sydney University is required to pass an examination other than an examination in law.[11] Barristers of England or Ireland or advocates of Scotland may be admitted without examination,[12] and also solicitors of five years' standing in the State.[13] Barristers of Victoria or Queensland may be admitted on special conditions.[14]

Solicitors.—No university graduate shall be required to pass any examination other than in law, either before or after entering into articles of clerkship, or to serve under such articles for more than three years.[15] Barristers of five years' standing may be admitted without examination.[16]

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[1] Judiciary Act, 1903, s. 49.

[2] Practitioners Admission Rules, 1908, Rule 3.

[3] *Ibid.* Rule 6.

[4] *Ibid.* Rule 9.

[5] *Ibid.* Rule 19.

[6] *Ibid.* Rule 9.

[7] *Ibid.* Rule 17.

[8] *Ibid.* Rule 14.

[9] *Ibid.* Rule 16.

[10] Act 22 of 1898, s. 4.

[11] *Ibid.* s. 8, and see memorandum by Mr. Cecil V. Barrington laid before the Royal Commission on University Education in London, Appendix to Third Report, Cd. 5911, p. 367.

[12] *Ibid.* s. 9.

[13] *Ibid.* s. 11.

[14] *Ibid.* s. 12.

[15] *Ibid.* s. 13.

[16] *Ibid.* s. 14.

Conveyancers.—Any barrister or solicitor desiring to practise as a conveyancer must go before a master in equity to be examined as to his skill and knowledge in conveyancing, as well as his character for integrity.[1] An appeal against the master's refusal of a certificate lies to the Court.[2]

Queensland.—The admission of barristers is entrusted to a Board constituted as in New South Wales,[3] who make rules for examination of candidates, but not to apply to barristers of England or Ireland or advocates in Scotland.[4] The admission of a barrister to the Supreme Court is in open court by the judges.[5] The distinction between barristers and solicitors was abolished in 1881.[6] Women enjoy the rights and privileges of admission to the legal profession, and are subject to the same liabilities and obligations as men.[7]

South Australia.—The conditions of admission to the legal profession are contained in the Supreme Court Rules, 1890, made by the judges under the authority of Act No. 31 of 1855-6. Persons may qualify by being articled to a practitioner, or as associate or acting associate to a judge for ive years, to be reduced to three years in the case of a Bachelor of Arts or Laws in the University of Adelaide or any university recognised by it.[8] Before entering articles the applicant must have matriculated at Adelaide or a recognised university, or have passed the preliminary or any intermediate examination required of articled clerks in England, Scotland, or Ireland.[9] During the period of his articles he must confine himself to the work of a practitioner.[10] Before being admitted to practise he must either possess the degree of Bachelor of Laws or pass an examination in law.[11] Only British subjects[12] of twenty-one years of age[13] can be admitted as practitioners. Barristers or solicitors in England or Ireland, advocates or law agents in Scotland[14] are qualified for admission.[15] Persons who have been articled as aw agents in Scotland[16] or as solicitors in England, Ireland, any British colony or possession in Australia, New Zealand, South Africa, or North America, or have served part of that time and complete the period with a practitioner in South Australia, are entitled to be admitted as practitioners, also any barrister, solicitor, attorney, or proctor admitted in any part of the British Empire where the standard of qualification is not inferior to that in South Australia.[17] Three months' residence in South Australia before admission to be continuous in all cases, but the Court has power to dispense with the rule.[18] Intention to apply for admission must be advertised in two newspapers in the State.[19]

Tasmania.—The Board of Examiners, subject to the control of the judges,[20] authorised to carry out the conditions of admission to be practitioners consists of seven persons—the Attorney- and Solicitor-General (*ex officio*) and five appointed by the judges, of whom at least five, including the *ex-officio* members, must be practitioners.[1] It is necessary to serve under articles, to which the applicant may be admitted on attaining the age of sixteen years and after matriculating in the University of Tasmania or passing some equivalent examination.[2] The period of service is five years, but if before being articled he has taken his Bachelor of Laws degree it is reduced to two. If before applying for admission he is the possessor of a Bachelor of Arts degree the period is four years, or if of Laws it is only three years.[3] Before admission he must pass the prescribed examinations. Barristers and solicitors of England or Ireland, and advocates or writers to the signet in Scotland, may be admitted without examination.[4] Members of the legal profession from other parts of the Empire where the system of English law prevails, the standard of qualification is equivalent, and reciprocal privileges are granted to Tasmanian practitioners, may be admitted without examination.[5] The conditions of admission from other States of the Commonwealth are set forth in a later Act.[6] The solicitor or barrister must have either (1) served five years under articles, or (2) be a graduate of the University of Tasmania or other recognised university and have served three years, or (3) be qualified in Victoria and have served three years, or (4) be of three years' standing as barrister or solicitor.[7] Women are entitled to the full rights of admission to the legal profession.[8]

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[1] Act 22 of 1898, s. 17.

[2] *Ibid.* s. 19.

[3] 11 Vict. No. 57, s. 1.

[4] *Ibid.* s. 2.

[5] *Ibid.* s. 3.

[6] 45 Vict. No. 5.

[7] 5 Ed. VII. No. 10.

[8] Rule 11.

[9] Rule 6.

[10] Rule 4.

[11] Rule 8.

[12] Rule 19.

[13] Rule 18.

[14] Rule 7, Jan. 1903.

[15] Rule 11.

[16] Rule 7, Jan. 1903.

[17] Rule 11.

[18] Rule 13.

[19] Rule 20.

[20] 60 Vict. No. 43, s. 48.

Victoria.—There is a Council of Legal Education to regulate the conditions upon which admission may be obtained to the legal profession. It consists of the judges—the Chief Justice being president—the Attorney- and Solicitor-General, the Dean of the Faculty of Law of Melbourne University, and two members nominated by the Council of the University, three members nominated by the Council of the Law Institute of Victoria, and three members nominated by the Committee of Counsel of Victoria.[9] Practitioners from other States of the Commonwealth may be admitted on terms of reciprocity.[10] Similarly the admission of barristers or solicitors from other parts of the British dominions depends upon the existence of reciprocal privileges.[11] The course for admission to the practice of law is by service under articles, during which it is necessary to pass a set of examinations.[12] The first is a preliminary of the standard of matriculation before being articled,[13] for the second the degree of Bachelor of Laws may be substituted,[14] and the possessor of that degree is only required to serve two instead of three years under articles.[1] The profession was opened to women in 1903.[2]

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[1] 60 Vict. No. 43, s. 5.
[2] *Ibid.* s. 8.
[3] *Ibid.* s. 20.
[4] *Ibid.* s. 16.
[5] *Ibid.* s. 17.
[6] 2 Ed. VII. No. 10.
[7] *Ibid.* s. 3.
[8] 4 Ed. VII. No. 14.
[9] 3 Ed. VII. No. 1887, s. 6.
[10] *Ibid.* s. 2.
[11] 58 Vict. No. 1387, s. 2, impliedly though not specifically repealing 56 Vict. No. 1275, by which natives of Australia might receive their legal training in the United Kingdom and be admitted without proof of any further qualification.
[12] 55 Vict. No. 1216, s. 11.
[13] *Ibid.* s. 11.
[14] 58 Vict. No. 1387, ss. 3, 4.

Western Australia.—The body entrusted with regulating the admission to the legal profession is called the Barristers' Board, and consists of the Attorney-General, the Solicitor-General or Crown Solicitor, every one of the King's Counsel residing and practising in the State, and five practitioners of at least three years' standing and practice in the State elected annually by the practitioners on the roll of the Supreme Court residing and practising in the State.[3] Barristers and solicitors in England and Ireland, writers to the signet and solicitors in Scotland, are entitled to admission after six months' residence in the State, but the Act does not include Scottish advocates. Solicitors or attorneys from other parts of the Empire where the system of jurisprudence is founded on or assimilated to the common law and principles of equity as administered in England may be admitted if the qualifications correspond with those of the State.[4] To qualify in the State the applicant must be a British subject, sixteen years of age, and have passed an examination for which matriculation in any university in the United Kingdom, the Commonwealth of Australia, or New Zealand is a substitute.[5] The period of service under articles is four years, reduced to three for holders of a degree of Bachelor of Laws of any university in the United Kingdom, the Commonwealth of Australia, or New Zealand.[6] A preliminary and final examination must be passed before admission, which can only be by the full Court.[7] By an amendment of the principal Act any clerk who has served for ten years, of which five were occupied as managing clerk before passing the final examination may be admitted, but he must not practise within twelve months of his admission either on his account or with another legal practitioner within three miles of the office of the principal with whom he was engaged any time during twelve months before his admission without the latter's written permission.[8]

New Zealand.—Barristers who have been in practice for three years in any part of the United Kingdom are not required to pass an examination before admission. Others are required to pass an examination in the law of New Zealand so far as it differs from the law of England. Barristers, male or female, from other parts of the British dominions are required to pass a similar examination[9] unless the Governor has made an Order-in-Council exempting those of three years' standing on the ground that reciprocal admissions on a basis of corresponding qualifications are in force.[10] A graduate of any university in the British Empire may be admitted as a barrister upon passing an examination in law, and if he is a Bachelor of

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[1] 58 Vict. No. 1387, s. 5.

[2] 3 Ed. VII. No. 1837, s. 2.

[3] 57 Vict. No. 12, s. 4.

[4] *Ibid.* s. 14.

[5] 9 Ed. VII. No. 37, s. 6.

[6] 57 Vict. No. 12, s. 14.

[7] *Ibid.* s. 17.

[8] 9 Ed. VII. No. 37, s. 2.

[9] Consolidated Statutes, 1908, No. 100, s. 4.

[10] *Ibid.* ss. 4, 42.

Laws the examination will only deal with the differences between the laws of New Zealand and England, and the practice of the law.[1] The conduct of the examinations is under the control of the judges, who may themselves act as examiners.[2] Solicitors who have been in practice for five years either as principals or managing clerks may be admitted as barristers.[3] The conditions of admission for solicitors correspond with those for barristers, and it is provided that the final examination shall "be of the same character and description as that for the time being prescribed in England for solicitors of the Supreme Court of Judicature in England."[4]

SOUTH AFRICA.

Union of South Africa.—By s. 115 of the South Africa Act[5] "the laws regulating the admission of advocates and attorneys to practise before any superior Court of any of the Colonies shall, *mutatis mutandis*, apply to the admission of advocates and attorneys to practise in the corresponding division of the Supreme Court of South Africa."

The Cape of Good Hope.[6]—*Advocates.*—By the Charter of Justice, 1834, s. 18, the Cape Supreme Court is empowered to admit to practise as barristers and advocates such persons as have been admitted as barristers in England or Ireland, or advocates in the Court of Session of Scotland, or to the degree of Doctor of Laws in the Universities of Oxford, Cambridge, or Dublin.

By s. 23 of the Charter of Justice the functions and office of barristers and advocates shall not be discharged in the Cape Supreme Court by the attorneys, solicitors, and proctors thereof. But, by s. 24, where there are not sufficient barristers and advocates in the Colony competent and willing to act for the suitors in the Supreme Court the Court may admit any attorneys, solicitors, or proctors to act as advocates during the time of such insufficiency only.

By Act 12, 1858, s. 2, in addition to the persons entitled to admission as advocates under the Charter of Justice, the Supreme Court was empowered to admit as advocates certain persons who had passed certain examinations of the Board of Public Examiners. This Board ceased to exist, in accordance with the provisions of s. 27 of Act 16, 1873, and was replaced by the University of the Cape of Good Hope. By s. 20 of Act 16, 1873, persons who shall have obtained or been admitted to the degree of Bachelor of Laws in the Cape University shall, in terms of s. 2 of Act 12, 1858, be eligible to be enrolled as barristers or advocates of the Supreme Court.

By Act 30, 1892, it is enacted that advocates of the Supreme Court or igh Court, as the case may be, of Natal, the South African Republic (now ransvaal), the Orange Free State, or any other State or territory in South frica which has by proclamation been declared to fall within the terms of is Act, may be admitted as advocates of the Cape Supreme Court if (*a*) ey are still enrolled as advocates of such Supreme Court or High Court spectively, and (*b*) they have passed an examination in law which is eclared by Proclamation [1] of the Governor to be equivalent to the Bachelor Laws examination of the Cape University.

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[1] Consolidated Statutes, 1908, No. 100, s. 4.
[2] *Ibid.* s. 8.
[3] *Ibid.* s. 5.
[4] *Ibid.* s. 21.
[5] 9 Ed. VII. c. 9.
[6] Kindly contributed by the Attorney-General, F. G. Gardiner, Esq.

By the Cape University Incorporation Amendment Act, 1896,[2] s. 5, ter repealing s. 20 of Act 16, 1873, provision is made for the admission graduates of other universities to *ad eundem* degrees. It is then rovided that the degree of Bachelor of Laws shall not be conferred pon any person who shall not have obtained, or been admitted to, the egree of Bachelor or Master of Arts in the said University, or is not a older either of the first- or of the second-class certificate in literature and ience. The Act then lays down that no holder of an honorary degree in w shall, unless otherwise qualified, be eligible to be enrolled as a barrister advocate of the Supreme Court, and admission to a degree *honoris causa* hall not entitle the holder of such degree to the practice of any profession y virtue of such degree.

The obstacle to the admission of holders of *ad eundem* law degrees as partly remedied by the University Incorporation Amendment Act, 1899, hich provides that, notwithstanding anything to the contrary in s. 5 of e University Incorporation Amendment Act, 1896 (which repeals s. 20, ct 16, 1873), it shall be lawful for the Supreme Court to admit persons practise as advocates therein who, having on or before August 14, 896, obtained the degree, after examination, of Bachelor of Arts of the

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[1] This law has come into operation in regard to the Transvaal, a Proclamation of the nd contemplated in sub-s. (*b*) having been issued in 1904 (Proc. No. 355, dated Novem- er 10, 1904).

[2] No. 6, 1896. The construction of s. 5 gave rise to some difficulty in *Ex parte McIlwaine* C.T.R. 265). The applicant was a M.A. and LL.B. in the Royal University of Ireland, d was admitted to those degrees *ad eundem* in the Cape University. He asked to be ad- itted as an advocate of the Cape Supreme Court. The case turned upon the construction the words "admission to a degree *honoris causa*." It was contended for the applicant at "honorary degree" signifies the same thing as a degree *honoris causa*. But the urt held that an honorary degree was intended to mean a degree conferred without amination on persons who had obtained an equivalent degree from another university, d that a degree *honoris causa* was intended to mean a degree conferred without examina- n on persons who had not obtained an equivalent degree from any other university. e admission applied for was therefore refused.

In *Ex parte Van Hoytema* (9 C.T.R. 95; 16 S.C. 137; 16 C.L.J. 114) application for mission was made by a person who was a B.A. of the Cape University and held the *eundem* degree of LL.B. in the same University. It was contended that the applicant s entitled to admission, as he held the B.A. degree of the University by examination. t it was held that even in that case the holder of an *ad eundem* law degree was not itled to admission.

Cape University, shall thereafter have been admitted to the *ad eundem* degree of Bachelor of Laws of the said University.

By Rule of Court No. 194, promulgated on August 29, 1837, every person who has been or shall be approved, admitted, and enrolled to act and practise as a barrister and advocate in the Supreme Court shall in virtue of such admission and without any other enrolment be admitted to practise as a barrister and advocate in the Circuit Courts of the Colony.

The functions of attorneys shall not be discharged by any barrister and advocate in any Circuit Court except when there shall not be at the time in the town where such Court is holden three or more persons admitted as attorneys competent and willing to act, in which case it is competent for the Court to admit any such barrister and advocate to appear and act as an attorney.[1] All persons who have been admitted and enrolled to practise in the Supreme Court as barristers and advocates take precedence amongst themselves respectively according to the priority of the dates of their respective admissions to practise as barristers in England or Ireland, as advocates in the Court of Session of Scotland, or as advocates in the late Court of Civil and Criminal Justice.[2]

Attorneys.—The Rules of Court provide [3] that persons shall be eligible for admission and enrolment as attorneys who, previous to the time of application for admission, have become bound by written contract to serve within Cape Colony as a clerk to any barrister, advocate, attorney, solicitor, or proctor duly admitted to practise in the Court during five years subsequent to the date of such contract. Such persons must, during the whole of such term of service, have continued in actual employment within Cape Colony as clerks in the proper business and practice of the practitioner to whom they are articled, and must have been instructed, during the whole term of five years, in the knowledge and practice of the law by the practitioner to whom they have been articled.

Rule 150 provides that where (1) an articled clerk is apprenticed to a practitioner who dies, or discontinues his practice; or (2) the contract is cancelled by mutual consent of the parties; or (3) the clerk is legally discharged by rule or order of the Court—in either case before the expiration of his term of articles, and the clerk thereafter is articled to, and serves with, another practitioner, his service with the latter shall count as part of his five years' term of articles. Similarly, by Rule 151, a clerk who has duly served articles with a Cape practitioner for not less than one year may count as part of his five years of service any term during which he has been articled to and has served any attorney, solicitor, or proctor in England or Ireland, or as apprentice to any writer to the signet in Scotland, provided such period of service in England, Ireland, or Scotland does not exceed four years. In the same way, by Rule 152, a clerk who has duly served articles with a Cape practitioner for at least one year may count as part of his five years' service his period of service as clerk to the Chief Justice or any Judge of the Supreme Court, provided such latter period of service does not exceed four years, for the purpose of counting towards completion of the term of articles.

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[1] Rule 202.

[2] Rule 211. Advocates must pay an admission fee of £20 (Act 20 of 1884).

[3] Rule 149.

Act 12 of 1858, s. 3, provides that persons holding certificates in Law and Jurisprudence (which are granted after passing a Law Certificate examination of the Cape University under Act 16, 1873, s. 21) may be admitted and enrolled as attorneys of the Cape Supreme Court after service as apprentice or clerk, by written contract, to any advocate, attorney, solicitor, or proctor throughout the term of three consecutive years, as fully and effectually as any person who has served the full term of five years is eligible for admission under Rule 149 (made in accordance with s. 20 of the Charter of Justice, 1834).

Act 27, 1883, s. 14, provides that a true copy of all articles of clerkship must be registered with the Council of the Incorporated Law Society of the Cape of Good Hope.[1]

The provisions of the law regarding registration of articles and admission of practitioners apply, *mutatis mutandis*, to the Eastern Districts Court and the High Court of Griqualand.

Enrolment as an advocate virtually cancels a previous enrolment as an attorney. If the advocate wishes to practise as an attorney he must have his enrolment as advocate annulled and be reinstated as an attorney.

Examinations.—In addition to proof of service for three years under articles with an attorney of the Cape Supreme Court, Eastern Districts Court, or High Court of Griqualand, a person wishing to be admitted as an attorney in either of such Courts must show that he has passed the "practical" examination for attorneys and the Law Certificate Examination of the Cape University.

The practical examination is regulated by Rule 293, which provides that no person shall be admitted except on a written certificate of three examiners (one advocate and two attorneys, all of not less than seven years' standing), testifying that they have examined the applicant, and that he is qualified for admission. This requirement does not dispense with any of the other qualifications.

Under Act 12, 1858, s. 3, as amended by Act 16, 1873, ss. 19, 21, persons who have duly served their articles may be admitted as attorneys of the Superior Courts upon obtaining a certificate of proficiency in law and jurisprudence of the Cape University. In order to be entitled to enter upon the examination for the certificate of proficiency in law and jurisprudence a candidate must have passed the matriculation examination of the Cape

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[1] A fee of £2 2*s*. must be paid for such registration within three months of the execution of such articles.

University; and this is essential even in the case of persons who have served under articles for five years.

The requirements for admission as a Cape attorney are therefore:

1. Service as an articled clerk for five years; though the period of five years required by Rule 149 has not been repealed, Act 12, 1858, s. 3, provides, as already noted, that holders of the Law Certificate may be admitted after three years' service. For this reason almost all articles are now framed for three years only.
2. Passing the "practical" examination.
3. Passing the Law Certificate examination.

In addition to persons who have qualified in Cape Colony, the following persons may be admitted, without further qualification, as attorneys, under s. 19 of the Charter of Justice, 1834:

(1) Attorneys or solicitors of the Courts of Record at Westminster (now the English Supreme Court of Judicature).

(2) Attorneys or solicitors of the Courts of Records at Dublin (now the Supreme Court of Judicature of Ireland).

(3) Proctors of the Ecclesiastical Courts of England or Ireland.

(4) Writers to the signet in Scotland.

With regard to articled clerks it has been laid down[1] that if there be any misconduct on the part of an articled clerk such as to warrant the cancellation of his articles, his past service will not count.

Under Act 30, 1892, s. 2, a person may be admitted to practise as an attorney who (*a*) has been admitted and remains enrolled as an attorney in the Supreme or High Courts of Natal, the Transvaal, Orange River Colony, or any other State proclaimed by the Governor as falling within the Act; (*b*) has passed an examination in law proclaimed[2] by the Governor as equivalent to the Law Certificate examination of the Cape University; (*c*) has served articles for three years with an attorney of the Supreme or High Court in which he is enrolled; (*d*) has passed an examination in Cape Statute Law.

Persons may be admitted to the Law Certificate examination of the Cape University who have passed the examination prescribed by the Imperial Act, 36 & 37 Vict. c. 63, for law agents practising in Scotland.[3]

Every person admitted and enrolled to act as an attorney in the Supreme Court is admitted to act as an attorney in the Circuit Courts without any other enrolment.[4]

The office of a barrister and advocate is not to be discharged by an attorney in any Circuit Court except where there shall not at the time be in the town and place where such Court is holden three or more barristers competent and willing to appear.[1]

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[1] *In re Carroll*, 18 S.A.L.J. 188.

[2] A Proclamation, required to be made under this Act by the Cape Governor, has been promulgated in regard to the Transvaal (Proc. No. 2, dated January 3, 1903).

[3] Act 30, 1892, s. 7.

[4] Rule 195.

Natal.—Admission to practise is regulated by rules made under the Supreme Court Act.[2]

Advocates.—An applicant for admission as advocate must have practised for three years as an attorney and have passed the Natal Advocates' Preliminary[3] and Final examination.[4] A barrister in England or Ireland, an advocate in Scotland or the Transvaal, may be admitted[5] provided that he has passed a recognised examination in Roman-Dutch Law or the Natal Law Certificate examination on that subject[6] and an examination in Natal Statute Law and Practice.[7] An advocate or barrister in any British colony who has passed an examination in law for admission in that colony, or has practised there for seven years, is entitled to admission[8] upon possession of the same qualifications.[9]

Attorneys.—An applicant for admission as an attorney must have attained the age of twenty-one years, served his articles of apprenticeship, and attended a prescribed number of sittings of the Courts.[10] Solicitors in England and Ireland, law agents in Scotland, attorneys in the Transvaal or any other British colony, may be admitted upon conditions similar to those for barristers and advocates not qualifying in the province.[11] Before being accepted as a "candidate attorney" the applicant must have passed an examination of a number of specified British examining authorities, of which the standard is equivalent to the Oxford Higher Local.[12] He must be articled for four years[13] unless he possess a degree in law in an approved British university, possess a certificate of merit of any law examination recognised by an Inn of Court, passed a law examination recognised in any English, Scotch, or Irish Court as entitling admission in any such Court, have kept four terms in an Inn of Court, or served not less than three years in articles to an advocate, attorney, solicitor, or writer to the signet in the United Kingdom; when the period of his articles in Natal may be reduced to two years.[14] He must attend a specified number of sittings of the Court certified by the Registrar,[15] must not engage in any other employment,[16] and must attend a course of lectures approved by the Court.[17]

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[1] Rule 201. Attorneys in the Cape Province must pay an admission fee of £20.

[2] No. 39 of 1906.

[3] The same as the preliminary examination for the degree of Bachelor of Laws in the Cape of Good Hope University.

[4] Rules of the Supreme and Circuit Courts of the Colony of Natal, compiled for the Natal Law Society by J. J. Hillier, 1906. Rule 36. The examination is the same as the final for the degree of Bachelor of Laws for the Cape of Good Hope, except that Natal is substituted for Cape Statute Law.

[5] Rule 38.

[6] Rule 30, May 1908.

[7] Rule 27, April 1909.

[8] Rule 38, *ubi. sup.*

[9] Rules 30, May 1908; 27, April 1909.

[10] Rules of the Supreme Court, *ubi sup.* Rules 30 and 21.

[11] Rules 32 and 30, May 1908; 27, April 1909.

[12] Rule 16.

[13] Rule 17.

[14] Rule 18.

[15] Rule 21.

[16] Rule 23.

[17] Rule 26.

Orange Free State.—The two branches of the profession are separate.

Advocates.—The High Court may admit to practise as barristers or advocates any person who has been admitted as a barrister in England or Ireland or as an advocate in Scotland or the Cape of Good Hope, any barrister or advocate of seven years' standing in the Supreme Court of any British colony provided that he has not practised in partnership with any attorney[1] and has passed an examination in law equivalent to that for the degree of Bachelor of Laws in the University of the Cape of Good Hope,[2] and any British subject resident in any of the colonies or territories of British South Africa who has obtained from any university supported or controlled by the Governments of Germany, France, Holland, and Belgium a certificate or diploma of "Feris Utriusque Doctor" or of "Legum Doctor" or equivalent entitling him as regards professional qualifications to be admitted to practise as an advocate in the Superior Courts of the country in which such university is established.[3]

Attorneys.—The High Court may admit to practise as attorney or solicitor any solicitor in London or Dublin, writer to the signet, solicitor or law agent in Scotland, or attorney in the Cape of Good Hope,[4] any person of full age who has served for three years with an attorney of the province, has passed an examination equivalent to that in law and jurisprudence of the University of the Cape of Good Hope[5] and an examination in literature and science equivalent to the matriculation examination of that university,[6] any person who has practised as an attorney or solicitor in the Supreme Court of any British colony for seven years, and any person entitled to be admitted as an advocate who has not practised as such for six months immediately preceding his application to be admitted as attorney.[7]

Notaries and Conveyancers.—An attorney who has passed an examination in notarial practice may be admitted as a notary public, and similarly by an examination in conveyancing may become a conveyancer.[8]

Transvaal.—The rules in the Transvaal[9] correspond almost exactly with the requirements in the Orange River State except that there does not seem to be the same special provision for graduates in law of European universities. Attorneys and solicitors admitted from other British possessions must have served as clerks for not less than three years before their admission, in addition to being of seven years' standing.[10]

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[1] Administration of Justice Ordinance, No. 4 of 1902, s. 11.

[2] *Ibid.* s. 11 (*d*) (1) and s. 14 (*a*).

[3] Act. No. 39 of 1908, s. 1.

[4] No. 4 of 1902, s. 13.

[5] *Ibid.* s. 13 (*c*) and s. 14 (*b*).

[6] *Ibid.* s. 13 (*c*) and s. 14 (*c*).

[7] *Ibid.* s. 13. By a Private Ordinance (No. 2 of 1907) certain admitted agents were specially admitted as attorneys.

[8] No. 4 of 1902, s. 17.

[9] Proclamation No. 14 of 1902, and see also Ordinance No. 1 of 1904.

[10] Ordinance No. 31 of 1904, s. 8. Special arrangements for the admission of law agents—that grade of legal practitioner having been discontinued—were made by Act No. 33 of 1908.

THE GREAT JURISTS OF THE WORLD.

XIV. SAMUEL PUFENDORF.

[*Contributed by* COLEMAN PHILLIPSON, ESQ., LL.D., LITT.D.]

THE conception of modern law in general is based to a large extent on the assumption of a contractual foundation. The ubiquitous *consensus ad idem* is usually regarded as the predominating and determining principle. In the process of legislation, "objective" methods alone are applied and insisted on; so that to offer arguments savouring of abstract analysis is stigmatised as fantastic, as unpractical. In other words, only the *positive* construction of law is held to be valid, whilst the elaboration and co-ordination of doctrines derived from axiomatic principles of *natural* law are deemed untenable. And yet these two aspects, these two processes, cannot wholly be divorced from each other: one or the other may for this or that purpose be emphasised and considered apart, but both are inseparable concomitants of all intellectual, all juridical constructions. The "positivist" regards the immediate needs of a society of men or of a society of regularised communities or States as the indispensable criterion; he looks to the outward manifestations of men's minds, and prescribes accordingly—he tacitly (or maybe openly) holds that man is the measure of all things. (One may well ask in what respects modern "pragmatism" makes an intellectual and moral advance on the oft-discredited sophistic doctrines of old Protagoras and his school.) On the other hand, the "naturalist" investigates the fundamental attributes of human consciousness, invokes the conception of cosmic harmony and of man's relation thereto, and points out that certain conclusions drawn from such premises are inwardly approved and ought to be explicitly accepted by men and nations as unfailing guides of conduct. There is thus no real antagonism between the two, and the results of their respective methods are not necessarily incompatible. The votaries of natural law have no doubt often been led into extravagances through paying too little heed to actual conditions and going beyond the implications warranted by their data; but in this respect the fault lies not in the method but in its users. However, natural law, in spite of its being frequently maligned and scoffed at, will continue to hold the minds of men as long as men remain psychologists and moralists. Indeed, the modern world that casts it aside as "stale and unprofitable" is actually enjoying the benefits of many rules and institutions whose establishment is due to the practices and principles of previous generations relying on and submitting to the guidance and sanction of natural law. A great deal of modern international law is the outcome of the customs and rules of earlier nations and sovereigns who constantly appealed to natural law, and partly also the result of the advocacy of jurists like Gentilis, Grotius, Pufendorf and others who, to a greater or lesser extent, based their contentions on the same notion. Of all writers Pufendorf is perhaps its most consistent, systematic, thorough-going exponent. An examination of his main work will show how the conception is interpreted and applied in the relationships between men as constituting the State, as well as in those between States as constituting the "civitas gentium."

Life.—Samuel Pufendorf, the son of a Lutheran pastor, was born at Chemnitz in January 1632. The first elements of his education he received at Grimma. Originally intended for the ministry, he was sent to Leipzig to study theology. But there dogmatic doctrines and the prevailing spirit of intolerance turned him rather to the study of philology, philosophy, history, and jurisprudence. To Grotius and Hobbes he always acknowledged his great indebtedness. In 1656 he moved to Jena, where he met the mathematician Erhard Weigel, who introduced him to the philosophy of Descartes and its demonstrative methods of ratiocination, and taught him that Euclidean processes are as applicable to moral and juristic discourse as to mathematical inquiries.[1] Early in 1658 he became tutor in the house of P. J. Coyet, who was an ambassador of Charles Gustavus, king of Sweden, at Copenhagen. At this time the Swedish monarch who was pursuing his policy of aggrandisement in Denmark, extorted the treaty of Roeskild, but soon after recommenced hostilities. The Danes at once took retaliatory measures against the Swedish envoys; Coyet managed to escape, but the second minister, Steno Bjelke, and the whole suite, including Pufendorf, were arrested and thrown into prison. An eight months' captivity was spent by the latter in reflecting on the foundations and sanctions of law; and after rejoining Coyet in Holland he published at The Hague, 1660, his *Elementorum iurisprudentiae universalis libri II.*, which was received in many quarters with great applause. The following year he was appointed by Charles Louis, the elector palatine (to whom the latter work had been dedicated), to the chair—expressly established for him—of Law of Nature and Nations in the university of Heidelberg.[2] This was the first public professorship of its kind, and consequently its foundation marks a memorable event in the history of political and legal science. In 1667 he published, with the consent of the elector, a tract entitled *De statu imperii germanici*, which exercised a profound influence on German political policy, and was translated into several European languages.

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[1] It will be recalled, in this connection, that Spinoza's famous *Ethica* (*Ordine geometrico demonstrata*) was written between 1663 and 1665.

[2] It is particularly interesting to note that some dozen years later Spinoza was invited to the chair of Philosophy in the same university; but he refused it.

Pufendorf had come, during his residence at Heidelberg, into contact with many prominent public men, as, for example, Boineburg, whom he esteemed one of the ablest of statesmen, and the elector himself, who also commanded his high regard. The latter was believed to have supplied the author with many data for the last-mentioned critical work. However, the bitter controversies that were aroused by its publication induced him to leave Heidelberg, and so the next year he went to Sweden and accepted a professorship at Lund. After issuing many "dissertationes academicae," he produced (1672) his most famous work, *Iuris naturae et gentium libri VIII.* This was followed (1673) by an abridgment, *De officiis hominis et civis*, which was translated into most of the languages of Europe, including Russian by order of Peter the Great. These works were violently attacked in Sweden by several professors and pastors, who were joined in Germany by many assailants, especially amongst theologians, including Alberti of Leipzig. The denunciations of the alleged mischievous character of Pufendorf's writings, on the ground of their divorcing natural law from theology, were vigorously answered by him in his *Eris Scandica* (1676). In 1677 he proceeded to Stockholm, where he was appointed royal historiographer at the death of Loccenius, and at the same time was made a Secretary of State and Privy Councillor. Some ten years later, following on historical writings dealing with the European States and the Swedish sovereigns, there appeared *De habitu christianae religionis ad vitam civilem*, and soon after its publication he was called to Berlin by the Grand Elector, was appointed historiographer of Brandenburg, and was loaded with other honours. To this last period of his life belong many writings of a polemical character—historical, religious, political—as, for example, the posthumous publications *Ius feciale divinum sive de consensu et dissensu protestantium* and *De rebus gestis Frederici Wilhelmi magni electoris Brandenburgici commentariorum libri XIX.* A translation of the latter, which is perhaps his most important historical work, into German as well as French was ordered by Frederick III. In 1694 Charles XI. of Sweden created Pufendorf a baron; and in October of the same year he died, and was buried in the church of St. Nicholas, in Berlin.

Chief Works.[1]—For the purpose of the present essay, attention will be directed mainly to the *De iure naturae*; but it will be of advantage to add a brief note on one or two other works in order to indicate the author's wide activities, his interest in philosophy, in ethics, in religion, in jurisprudence, in economics, in politics, in all social phenomena. Indeed, questions relating to all these subjects occur again and again in the major treatise. It may be that in the case of Pufendorf devotion to such a large field dissipated his energies overmuch, and therefore diminished to some extent the value of his purely juristic work. But a jurist can scarcely attain consummate skill, deep penetration, and effective power in his own particular sphere if he does not also apply himself to the various branches of study directly bearing on human life, individual, social, and political.

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[1] Cf. P. Meyer, *Samuel Pufendorf: Ein Beitrag zur Geschichte seines Lebens* (Grimma 1894), in which booklet, concerned mainly with Pufendorf's genealogy and early life, there is a list of thirty-four publications.

The *De statu imperii germanici* was published under the pseudonym of "Severinus de Monzambano" (of Verona) at The Hague, though it bore Geneva on the title-page. By its form, its irony, its critical acumen it may be regarded as a worthy forerunner of Montesquieu's *Lettres Persanes*. The political condition of Germany is subjected to keen criticism. Full of enthusiasm and sincere love for his country,[1] he sets forth with biting wit the fundamental weakness of the organisation of the Holy Roman Empire, the misconception as to its being a continuation of the Roman, he denies that it conferred great benefits on the German people, denounces the faults and misdeeds of the Austrian house, and impugns the politics of the ecclesiastical princes. Judged from actual practice, he declares, the government is hopelessly irregular, conducted as it is by a strange medley of prelates and princes of more or less doubtful title; judged from political theory, it is no less than a unique monstrosity. After dealing with the prevailing confusion and its causes, he suggests remedies. He does not go to the length of assenting to proposals that had been made as to calling in French or Swedish intervention, or excluding Austria; he insists rather that the only way to procure unity and harmony is to establish a confederation of German States with a standing authority at its head. Pufendorf was the first who ventured to deal so plainly and forcibly with the existing conditions. By his trenchant criticisms, political insight, and masterly analysis he prepared the way for the measure which was to put an end to the multitude of petty tyrants and mediatised princes; and he laid down more rational conceptions of polity and sovereignty in place of the narrow scholastic notions based on distorted interpretations of Aristotle and the Bible.[2]

De habitu religionis. This is, in certain respects, an elaboration of doctrines which had been briefly suggested in the preceding work. The limits of Church and State, of the ecclesiastical and the civil authority, are clearly defined; and the State is certainly to enjoy supremacy. The Church is regarded as a union, resting on voluntary agreement, with various rights and obligations relative to its particular sphere and its maintenance and security; so that in relation to the State it stands in the position of corporations in general. This "collegial" system, adequately set forth for the first time by Pufendorf, later played a noteworthy part in Germany—especially in Prussia—and was the means of promoting greater toleration, and of smoothing over difficulties in the relationships between the Catholic Church and the Protestant Governments.[1]

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[1] Cf. *Allgemeine deutsche Biographie, s.v. Pufendorf* (by H. Bresslau), Bd. 26 (Leipzig, 1888), p. 703: "Unbarmherzig, mit überlegener Ironie und kühler Nüchternheit, mit bitterem Spott, der aber doch überall von inniger Vaterlandsliebe zeugt, wird hier das trügerische und lügenhafte Gewölk von Phrasen, mit denen die damalige Reichpublicistik die deutschen Zustände zu verhüllen liebte, durchlöchert und zerrissen; und in erschreckender Nacktheit treten die verkommenen und verrotteten Zustände ans Licht, in denen sich das officielle Leben der deutschen Nation bewegte."

[2] Bluntschli bestows high praise on this work of Pufendorf. See *Geschichte des allgemeinen Staatsrechts* (München, 1864), p. 111: "Das Büchlein ist eine politische Schrift ersten Ranges"; p. 120: "Die Schrift Pufendorfs ist ein staatsmännisches Meisterstück. Sie est ebenso ausgezeichnet durch den klaren historischen Ueberblick über die Entwicklungsgeschichte des Reiches als durch die psychologische Erkenntniss seiner organischen Mängel. . . ."

The *De iure naturae et gentium*, a large work in eight books, presents an entire system of jurisprudence, private, public, and international, based on the conception of natural law. Book I. considers the fundamental principles of law and its various divisions, the meaning of the state of nature, persons as natural and as moral entities and as fictitious creations, society, right, obligation, sanction. The second book expounds further the notion of natural law, state of nature, the foundation and *raison d'être* of law, the validity of customs, the doctrines of necessity and innate human reason, the relationship between natural and positive law, the hypothesis of divine command. The next five books deal with numerous matters of private law, from the point of view of the principles and conclusions emphasised in the previous exposition. The last book discusses briefly the meaning of sovereignty, and, from the sixth chapter to the end, the law of war in its three main stages, viz. commencement, conduct, and conclusion, and, finally, the establishment of treaties, conventions, and alliances.

In his earlier legal work, *Elementa iurisprudentiae universalis*, which embodies, as it were, a "philosophy of law," Pufendorf adopts the Euclidean method, and professes to establish certain conclusions by the strict process of mathematical demonstration. He first defines a number of elementary legal notions, and then sets forth certain propositions, as being an analytical summary of natural law. Of these some are termed *axiomata*, on the ground that they flow necessarily from the reason of man; others are designated *observationes*, as in them account is taken of experience also. From these the power of judgment and free will as well as self-love and the social instinct are inferred; thence the deduction is made that every one must inevitably seek self-preservation, but must do so in such a way as not to injure or imperil the welfare of society. The various precepts "implicitly" contained in this formula are inferred, and finally the conclusion is drawn that natural law alone will not suffice in a State, but must be supplemented and fortified by positive legislation.

From the point of view of composition these works are at a disadvantage as compared with those of other great jurists. They possess none of the force, concision, and facility of the style of Grotius, nor the variety, flexibility, and personal element of that of Gentilis; they are often monotonous, cumbrous, inanimate. Even the greater part of Pufendorf's historical work is somewhat dry, although its subject-matter is particularly susceptible of bright, vivid presentation. Mackintosh is not sparing in his praise of the *De iure naturae et gentium*, but none the less he deplores that the treatise may repel students because it is "so prolix, and so utterly void of all the attractions of composition."[1]

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[1] On this part of Pufendorf's work, cf. F. Lezius, *Der Toleranzbegriff Lockes und Pufendorfs* (Leipzig, 1900).

Natural Law—Course of Development.—In order to understand better the nature of Pufendorf's juristic work, its relation to that of his predecessors, and its influence on his contemporaries and successors, it will be well to consider briefly the conception of natural law which was prevalent before his time.[2]

The law of the modern world, whether municipal or international, is much indebted to natural law. Those who glorify the positive school of legal science are apt to overlook the concrete character of natural law, and to assign to it attributes of merely abstract, metaphysical significance. The exponents of the law of nature are not always at one in every particular, but their fundamental conception is that "Nature" represents the supreme, unifying, controlling power manifesting itself in the universe at large; and that "Reason" is a special aspect of this principle as looked at from the point of view of man and the operation of his mental and moral faculties. In so far as men are men they possess common elements; and in their political and social life these elements inevitably emerge and are recognisable in custom and law. Hence the substratum of this law is thought to be of necessity established by the universal guiding force, personified as Nature. Such natural law represents the permanent portion of human law in general, and it is prior and superior to positive legislation, which is only a supplement thereto demanded by changing circumstances in different localities. Conventional justice may well elaborate or extend its applications, but must not oppose its essential content or violate its spirit. In the field of international relations the law of nature was in early times repeatedly appealed to, because on the one hand of its unimpeachable sanction, and on the other because of the conflict of practices, and, where these were generally recognised, their apparent inadequacy.

Mediæval writers, variously influenced by Aristotelian and Stoic doctrines, by Cicero as well as by the *Digest*, often spoke of divine law as forming another category, but the idea of natural law nevertheless remained the predominating factor in legal development. As Prof. Nys says: "Les théories de l'égalité naturelle et d'un état de nature ont rempli dans l'histoire de l'humanité un rôle bienfaisant, car c'est en leur nom que presque tous les anciens abus ont été dénoncés, attaqués, détruits."[1] Ecclesiastics like St. Chrysostom and Isidore of Seville considered that the law of nature was identical with divine law, and that human law was based merely upon the force of custom.[2] This view was adopted five centuries later in the *Decretum* of Gratian,[3] one of the oldest portions of the collected canon law, which accepted also Isidore's division into *ius naturale*, *ius civile*, and *ius gentium*.[4] St. Paul had already spoken of a law written by God on men's hearts; St. Augustine had pointed to the eternal law which governs the City of God; Dante conceived the all-pervading universal force to be divine love; Aquinas distinguished between natural tendencies (self-preservation, protection and rearing of families, etc.) and the precepts of reason (*e.g.* in regard to man's relationship with God and with society), and held (with the Stoics) that natural law is the divine, eternal law as revealed to, as shared by the mind of a rational creature,[5] and is the source of human law (*i.e.* the positive laws of States). Thus "nature" is the criterion as to the validity of human law, and serves as a final appeal against injustice; as Suarez says: "Lex iniusta non est lex."[6] This is not a new principle, but a return to the doctrine of the Greek sophists and cynics. In England the law of nature, outside the canon law, played a comparatively small part. Bracton looked upon the law of nations as a product of natural law, and William of Ockham, whilst discriminating various senses of *ius naturale*, regarded it as being due to God.[7] Again, from time to time sovereigns appealed to natural law as a ground for legislation, for fortifying their own claims against the Pope or monarchs, or for opposing the extravagant contentions of others; and not infrequently the principle invoked was scarcely distinguishable from that of utility or expediency. In the Renaissance and in the Reformation controversies the *ius naturale* occupied a prominent place. The contractual theory of government was regarded as depending on the law of nature. Classical authority began to displace that of the schoolmen. The *ius gentium* of Roman law was sometimes identified with the natural law of the canonists; and in England the Chancellor's equity was referred intrinsically to the *ius naturae*, and by historical kinship to the prætorian jurisdiction.

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[1] Sir James Mackintosh, *A Discourse on the Study of the Law of Nature and Nations* (London, 1828), p. 25.

[2] See Sir F. Pollock, "History of the Law of Nature," in *Journal of the Society of Comparative Legislation*, No. 1. 1900, pp. 418-33; J. Bryce, "The Law of Nature," in *Studies in History and Jurisprudence* (Oxford, 1901), vol. ii. pp. 112 *seq.*; and the present writer's *International Law and Custom of Ancient Greece and Rome* (London, 1911), vol. i. pp. 78 *seq.* and *passim.*

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[1] E. Nys, *Les origines du droit international* (Bruxelles, 1894), p. 8.

[2] *Decretum Gratiani*, *Dist. prima*, c. 1: "Omnes leges aut divinae sunt aut humanae. Divinae natura, humanae moribus constant, ideoque hae discrepant, quoniam aliae aliis gentibus placent. Fas lex divina est, ius lex humana."

[3] To the same effect Gratian says, *ibid.*: "Humanum genus duobus regitur, naturali videlicet iure et moribus. Ius naturale est quod in lege et evangelio continetur, quo quisque iubetur alii facere quod sibi vult fieri et prohibetur alii inferre, quod sibi nolit fieri."

[4] On the ancient conception of the relation between *ius naturale* and *ius gentium*, see *International Law of Ancient Greece and Rome*, vol. i. pp. 52 *seq.*, 67 *seq.*

[5] *Summa Theologiae*, 1a 2ae, qu. 91, art. 2: "Participatio legis aeternae in rationali creatura lex naturalis dicitur."

[6] *De legibus*, III. 19.

[7] *Dialogus*, pars. III. tract. ii. l. 3, c. 6: "Omne autem ius naturale est a Deo qui est conditor naturae." (In the Lyons edition, 1494, at the British Museum, I. B. 41906 (1), at fol. cclxiii. v°, col. 2.—This is a work of which a modern edition is eminently desirable.)

In general, the fundamental conception was becoming gradually divested of theological significance; and the Roman legal compilations acquired a preponderance over those of the canonists, so that a more secularised law of nature was often appealed to instead of the Church. Thus, the disintegration of the Romano-Germanic empire, the decay of papal authority, the decline of feudalism, the discrediting of religious sanctions through the religious conflicts, the various speculative constructions of publicists, the resuscitation of classical literature together with Roman jurisprudence conduced to the more general acceptance of systems of law and ethics on a philosophical instead of a theological basis,[1] and to the production of great works (to speak only of those in the legal sphere) like those of Gentilis and Grotius. And to Grotius the indebtedness of Pufendorf was incalculably great.

Gentilis set himself to show that a large body of international law could arise from natural law, compacts, and inveterate customs, and advised theologians to keep to their own sphere.[2] Grotius attempts to indicate that a political philosophy in general, and a juridical system in particular, can be validly constructed without the aid of theology and its disputed doctrines. He begins with the eternal and immutable law of nature as "dictatum rectae rationis," and implicit in the first principles of things. Though God is its author, He cannot change it. Hence it is distinguished from the *ius divinum voluntarium*, the more arbitrary laws of God,[3]—His revealed law. He elsewhere remarks that human nature may be said to be the mother of natural law, and, through contractual relationships due to the exigence of society, the great-grandmother of "civil" law.[4] Natural law does not necessarily demand the establishment of particular institutions, private or international, but it does enjoin on us certain conduct towards them when they have been created[5]; that is, it comprises such rules of justice as would govern men as moral and responsible beings, living in society independently of positive human institutions—in other words, in a "state of nature." Hobbes, on the other hand, whilst retaining the expressions *lex naturalis*, *ius naturale* and admitting the immutable and eternal character of natural law, gave them a different interpretation. Indeed, his doctrine was revolutionary, in that his *ius naturale* indicates not rules of supreme sanction but the state of nature, wherein each man might use his power for his own advantage, and be solely concerned with his own preservation.[1] Thus in these circumstances men were inevitably in conflict with each other ; and to remove or minimise their strife they agreed to renounce their natural rights, and place them in the hands of a monarch who could henceforth command their allegiance. As his right is due to the power conferred on him and not to any bilateral engagement, there is no restriction on the reasonable exercise of his sovereignty. Amongst opponents of Hobbes may be mentioned Cumberland, who insisted on the principle of utility and the general good.[2]

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[1] On this point, cf. W. Hasbach, *Die allgemeinen philosophischen Grundlagen der von François Quesnay und Adam Smith begründeten politischen Ökonomie* (Leipzig, 1890).

[2] See the present writer's article on Gentilis in *Journal of the Society of Comp. Legislation*, July 1911, pp. 52-80; at p. 57.

[3] *De iure belli et pacis*, *Proleg.* 9; I. 1. 4-5. Hooker (*Ecclesiastical Polity*, Bk. I.) had already considered natural law as the essential substratum of revealed religion.

[4] *Proleg.* 16: "Nam naturalis iuris mater est ipsa humana natura, quae nos, etiamsi re nulla indigeremus, ad societatem mutuam appetendam ferret: civilis vero iuris mater est ipsa ex consensu obligatio, quae cum ex naturali iure vim suam habeat, potest natura huius quoque iuris quasi proavia dici."

[5] Grotius, I. 1. 10. 7.

From the point of view of Pufendorf's work and its chronological position, there is no need to trace further the subsequent development of the theories of "nature" and the social contract, in the hands, for example, of thinkers like Locke, Montesquieu, Rousseau, and others. Pufendorf throughout acknowledged his debt to Grotius and Hobbes ; he often criticised the latter, whom, however, he sometimes misinterpreted, and generally accepted with approbation the views of the former, as well as those of Cumberland. But to a thinker like Spinoza he manifested undisguised hostility ; he was perhaps unable to appreciate this great philosopher's doctrines of pantheism and determinism, and his views as to the unity, infinity, and self-containedness of nature.

Pufendorf's Method.—Pufendorf composed his *De iure naturae et gentium* as a professor writing for students of law in general. Grotius launched forth his work as an ardent reformer addressing the nations of the world. The work of the later writer is from many points of view so closely connected with that of the earlier that it constitutes almost an appendix to it, offering here a commentary, a more detailed exposition of some matters, and there (though less frequently) a refutation of others. Perhaps it is not too much to say that had the *De iure belli et pacis* never been produced, the *De iure naturae et gentium* would never have appeared, at all events in its present form. Pufendorf is to Grotius what Wolf is to Leibnitz, Condillac to Locke, what, in fact, the systematiser is to the inventor ; as a French writer says : "Ce que l'esprit d'organisation est à l'esprit d'invention."[3] As has already been pointed out, Weigel, the Jena mathematical professor, exercised a great influence on Pufendorf, who soon became convinced that given certain fundamental principles appertaining to human life, it was possible to develop deductively—whether directly or mediately—an entire body of valid conclusions representing a code of conduct. This method likewise appealed to philosophers like Descartes, Spinoza, Wolf, and others who worked in more or less different fields. In the days of Pufendorf the boundaries of the spheres of philosophy and the regulative or normative sciences were seldom clearly differentiated and separately marked out. So that we find his work comprehending matters of metaphysics and ethics, politics and economics, as well as jurisprudence; but amongst modern writers he was perhaps the first to emphasise the distinction between duties of perfect obligation (the sphere of law) and those of imperfect obligation (the sphere of ethics), though Kant's statement of the doctrine is clearer, profounder, and more acceptable. Likewise he separated natural law from theology, as Spinoza[1] had separated the latter from philosophy; and thereby both aroused the bitter hostility of the orthodox. Writers like Vico found fault with Pufendorf as well as with Grotius and Selden for not taking divine Providence as a true basis for natural law. Pufendorf felt that Grotius in his treatment of international relations had not sufficiently shown the necessary connection between ethical and legal principles; hence in his *De iure naturae et gentium* he attempted to construct on foundations derived from human nature not merely an international law, but an entire system of jurisprudence that would be universally and permanently applicable.

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[1] *Leviathan*, c. 14.

[2] Cf. his definition of law of nature, *De legibus naturae*, v. 1 : "Lex naturae est propositio a natura rerum ex voluntate primae causae menti satis aperte oblata vel impressa, quae actionem agentis rationalis possibilem communi bono maxime deservientem indicat, et integram singulorum felicitatem exinde solum obtineri posse."

[3] A. Franck, *Reformateurs et publicistes de l'Europe : Dix-septième siècle* (Paris, 1881), p. 336.

Throughout his argument proceeds logically; sometimes it is put in another form to exhibit its consistency and cogency. He manifests a constant and invincible tendency to analyse and classify; interminable divisions and sub-divisions, endless distinctions and discriminations are made. He frequently makes cross-references to his work, a practice but little indulged in by early writers; this ensures uniformity and minimises self-contradiction. Writers of supreme genius can afford now and again to be inconsistent; not so those of lesser capacity, and those possessing chiefly systematising aptitudes. He endeavours regularly to reinforce his generalisations by means of citations from both ancient and contemporary authors, and also by illustrations drawn from his knowledge of human psychology.

His Theory.—Grotius conceived that the intrinsic nature of things formed the foundation of law; Hobbes held that its source was the will of a sovereign of undefined power. Pufendorf effected a certain compromise between these views. The basis of legal obligation is for him the will of a superior, strong enough to punish resistance and disobedience, but at the same time consulting reason and justice so as not to interfere unduly and without cause with the liberty of subjects. The State and the power of the emperor may be said to be derived from contractual transactions, firstly between the constituent individuals of the State, and secondly between them and him; but in reality the institution was ordained by God, as peace is attainable only in organised social life. "Sociability" is the natural principle of rights and duties. Natural law regulates the external acts of mankind. The state of nature is not one of war, as Hobbes held, but a state of peace. This peace, however, being precarious, insecure, it must be ensured by means of positive legislation, which will thus serve as a supplement to and extension of natural law, and will be in accord with it. Pufendorf is not content to see in this sociability a fact of universal experience; he claims for it a metaphysical significance, and traces it to more elemental causes.

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[1] Cf. his *Tractatus theologico-politicus* (1670). (This work, along with Hobbes's *Leviathan*, suffered synodic condemnation in 1671.)

The fundamental principles immanent in social phenomena he designates "moral beings," *entia moralia*, which were created by God—determined by the divine *impositio*[1]—in order to introduce order and harmony into human life. Indeed, the very existence of God is perfectly demonstrated (in Pufendorf's opinion), not so much by reference to the manifestations of the physical universe as to mankind's possession of reason, a moral consciousness, a moral nature, an innate power to discriminate between good and evil, between justice and injustice. These moral entities lie at the root of family relationships and civic obligations; and their totality constitutes the "state of nature." They act as guides and monitors; and their implicit behests—forming the law of nature—may be deductively applied to particular cases by human individuals or groups acting in the capacity of "moral persons." We see, therefore, that Pufendorf, unlike Grotius, repudiated the Thomist doctrine as to the independent existence of the good, and affirmed rather the Scotist principle that a thing is good simply because God has imposed it. Hence starting from the axiom that the divine will has enjoined on man a peaceful and social life, it follows on the one hand that all conduct antagonistic thereto is necessarily prohibited, and on the other that everything tending to its conservation is necessarily commanded. From this conclusion all human obligations may be derived specifically; as such they are divisible into duties towards oneself, and those towards one's fellow-creatures. And by the due fulfilment of these, one's duties to God are performed at the same time.[2] Then discrimination is made between the duties of men as men and the duties of men as citizens of a given State. (In the treatment of the former he borrows much from Grotius, in that of the latter from Hobbes.) Non-fulfilment of these duties would mean the annihilation of society. As for the law of nations, Pufendorf, like Hobbes, considers it merely a fragment of natural law; for States are "moral persons," subject to the same principles of conduct as are applicable to individuals. Thus he holds, with certain qualifications, that there is no really positive international law; treaties cannot *per se* establish a law, they can only confirm what is already implicit in natural law.[3] All nations, including non-Christian and heathen, are governed by this universal law, and equally share its rights and obligations.

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[1] On this question Pufendorf is in opposition to Leibnitz, who accepted the Thomist doctrine.

[2] In the *De officiis*, Pufendorf placed the obligations towards God in a category by themselves, and before the two other classes.

[3] Cf. his *Elementa iurisprudentiae*, 24-6.

It is, no doubt, easy to find various defects in Pufendorf's theory. Sometimes it is vitiated by unjustifiable assumptions, at other times by the elimination of relevant matters, and again through his occasionally failing to discriminate between certain relative conceptions, in spite of the multiplicity of his distinctions. He does not recognise adequately the practical character of law, private or international. He misinterprets Grotius's use of the expression *ius voluntarium* in reference to the law of nations, as based on natural law, and denies that there can be "voluntary" and therefore mutable law. So that in view of his insistence on the immutable, invariable character of law, the demands of time, place, circumstance, necessity are disregarded. Again, he attaches himself too much to the external organisation of natural law. He tends to confuse legal obligation with legal sanction, the intuitions of the moral consciousness with the commands, direct or indirect, of objective law. As to his doctrine that duty is founded on the will of a superior, he does not perceive whether the strength or the justice of that superior is the determining factor. Further, in trying to better Grotius's doctrine, which insists on human sociability, reason, and divine will as the three-fold basis of natural law, he almost entirely eliminates the element of reason and associates the other two in such a way that the divine will exerts no perceptible influence on human sociability, and therefore appears to be of little use. Leibnitz, in his *Monita quaedam ad Samuelis Pufendorfii principia*,[1] examines the philosophical value of Pufendorf's doctrines. He urges that Pufendorf unduly restricts the sphere of natural law in referring it exclusively to man's life on earth, and neglects to exhibit the connection between the idea of divinity and that of justice; that he makes law occupy itself solely with external actions[2]; that he does not distinguish clearly between right and law, between morality and legality; that his definition of law as the arbitrary will of a superior (namely God) is erroneous in that it negatives the spontaneous character of duty, and necessarily regards those without a superior as being exempt from obligations[3]; that justice does not depend on the arbitrary will of God, but has its source in His essential being, in eternal and immutable truths ("Neque ipsa norma actionum aut natura iusti a libero eius decreto, sed ab aeternis veritatibus divino intellectui obiectis pendet").[4]

[1] *Opera*, 6 vols., ed. L. Dutens (Genevae, 1768); in vol. iv. pt. 3, pp. 276 *seq.*

[2] Cf. *ibid.* p. 277: "Itaque neque aliud admittendum est, quod insinuat auctor, quae intra pectus latitant, nec foris prorumpunt, ad ius naturae non pertinere; qua ratione ex mutilato fine iuris naturae, etiam obiectum eius nimis contrahi manifestum est."

[3] *Ibid.* p. 279: "Quae si admittimus, nemo sponte officium faciet; immo nullum erit officium, ubi nullus est superior qui necessitatem imponat; neque erunt officia in eos qui superiorem non habent. Et quum auctori officium et actus a iustitia praescriptus aeque late pateant, quia tota eius iurisprudentia naturalis in officii doctrina continetur, consequens erit omne ius a superiore decerni."

[4] *Ibid.* p. 279. Cf. the subsequent observation: "Neque enim iustitia essentiale Dei attributum erit, si ipse ius et iustitiam arbitrio suo condidit. Et vero iustitia servat quasdam aequalitatis proportionalitatisque leges, non minus in rerum immutabilitate divinisque fundatas ideis, quam sunt principia arithmeticae et geometriae."

Analysis of "De iure naturae et gentium."[1]—This is a large work in eight books; and its matter may be conveniently presented in the order of Pufendorf's treatment, but in accordance with the following modified classification: (1) Fundamental principles of law, and its divisions (Book I.), (2) State of nature, natural law (Book II.), (3) Elementary rights and duties of humanity: civil societies and sovereignty (Book III.—Book VIII. c. 5), (4) Law of war (Book VIII. c. 6.—Book VIII. c. 7), (5) Treaties of peace, leagues, and other conventions (Book VIII. c. 8—end). The third division is of a very comprehensive character, and occupies a large proportion of the entire work; but for the purposes of this essay its substance will be but briefly touched upon. It is important to bear in mind that Pufendorf's object was to set forth not merely the outlines of a code of law, but the principles of a philosophy of jurisprudence. Hence the lawyer must bear with seemingly superfluous metaphysical arguments and distinctions found in his work (*e.g.* those relating to entities, modes, space, time, etc.), and the metaphysician must be sparing in his condemnation if he perceives that they present no definite, coherent system of philosophy, and are constantly—perhaps indiscriminately—associated with matters lying outside the sphere of metaphysics. In the course of the following concise analysis critical observations will be largely avoided, as enough will perhaps have been said in other parts of the essay to indicate the jurist's merits and defects. To offer an elaborate critique of the entire work would demand an investigation into the fundamentals and relationships of many subjects, and would therefore need several volumes.

1. **Fundamental Principles of Law: its Divisions.**—Physical substances or beings are the creatures of God, and constitute the universe. All these have their particular attributes. Moral entities ("entia moralia") are certain modes or attributes superadded to natural things and motions by intelligent beings, chiefly for directing and tempering the freedom of man's voluntary actions and for procuring decent regularity in human life.[2] It is God's will that human actions be moderated by definite principles.[3] To be a man necessarily implies possession of rights and subjection to obligations. The state of man is either natural ("status naturalis") or adventitious ("status adventitius"), *i.e.* as modified by human institutions[4]; and the relationship it involves subsists both in time of peace and of war. Peace is common, when maintained through duties derived purely from the law of nature; it is particular, when its force is due to express compacts binding the parties

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[1] The edition used here is that of Amsterdam, 1715.—There is an English translation by Kennett (London, 1729), which, however, appears to be based more on the French translation of Barbeyrac than on the Latin original.

[2] I. 1. 3: "Modi quidem, rebus aut motibus physicis superadditi ab entibus intelligentibus, ad dirigendam potissimum et temperandam libertatem actuum hominis voluntariorum, et ad ordinem aliquem ac decorem vitae humanae conciliandum."

[3] *Ibid.*

[4] I. 1. 7.

thereto. Moral beings considered as substances are called "moral persons"[1]; they are either simple or compound. Simple persons are public (either political or ecclesiastical) or private (simply citizens). Pufendorf holds that Hobbes[2] unnecessarily erects legal fictions, as when a man is made to bear the *persona* of an inanimate object or place, such as a church, a hospital, and that it is better to say plainly that certain men are empowered by the community to collect the revenue settled for preserving such places or things and to bring or defend actions that may arise therefrom.[3] Compound moral persons (societies) consist of several individuals so united that what they will or do in virtue of that union is deemed a single will or a single act.[4] They are public (either civil or sacred) or private (families, colleges, or corporations). Examples of the sacred are the Catholic Church, councils, synods. The civil may be subdivided into general (*e.g.* a commonwealth) and particular (senate, parliament). Armies may be called military societies. Moral beings established by divine imposition can be destroyed only by the will of God; those due to human institution may be abolished by human will, without affecting the physical substance of the persons or things involved, *e.g.* the degradation of a man of rank means the loss of rights peculiar to that rank, and leaves intact all rights other than these. Further, moral entities may be considered as, or by analogy with, modes. Modes are either "affectivi" or "aestimativi," *i.e.* relate to quality or to quantity. Qualities are formal (simple attributes) or operative (which are divided into primitive and derivative).[5] Moral operative qualities of the primitive kind are either active or passive; and of the former the chief are power, right, and obligation.[6] Power with respect to its efficacy may be perfect (when it may be asserted by force, if need be, as by war or an action at law), or imperfect (when it may not be so asserted, though it would be "inhuman" to prevent one's enjoying it); with respect to its subject it is personal or transferable; with respect to its objects, power may be exercisable over our own persons and actions (liberty), over our own things or goods (property), over the persons of others (empire or command which may be absolute or limited), over the things of others (servitude).[7] Pufendorf then points out the ambiguity of the Latin word *ius*, but fails to give a satisfactory definition of "right."[8] An obligation is that by which a man is bound under a moral necessity to perform, or admit, or undergo anything.[9] As to moral quantity, it is price in things, esteem in persons (though both of the latter may be included under value); in the case of actions, no name is suggested.

Next the author discourses on the certainty of moral science, which he defends against those who deny it,[10] on the human understanding, conscience, error,[11] on the freedom of the will,[12] on moral actions,[13] on the rule of moral actions, or law in general.[1] He distinguishes law from counsel, compact or covenant, and right. Obedience to law arises not from its matter (as in counsel), but from the legislator's will,[2] as law is the command of a sovereign to his subjects,[3] who have no power to examine or reject it. Right denotes a liberty, but law includes a bond restraining our natural liberty. It is sufficient if the legislator's will is communicated to his subjects in any way whatever, even "by the internal suggestion of natural right." Hence it is a piece of "inutilis subtilitas" on the part of Hobbes to hold that the laws of nature have force only when promulgated by the word of God in Holy Scripture, and not when simply apprehended by reason. He also rejects Grotius' view,[4] which implies the existence of the just and right before that of any rule of law. Obligation involves moral consciousness, and self-censure, if the prescribed rule is not obeyed; compulsion merely shakes the will by an external force. He alone is obliged who has knowledge of the rule, and has a will intrinsically free, "able to steer contrary ways," but which perceives that it ought not to depart from that rule.[5] Neither mere force[6] nor any other natural pre-eminence is alone sufficient for imposing an obligation[7] (for nature and law are often contrary to each other); it is necessary that one who is to be subjected to another's will should have either received some considerable good from him or should have voluntarily submitted to his direction.[8] Thus the doctrine that law is the will of the stronger must be modified.

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[1] I. 1. 12. [2] *Leviathan*, c. 16. [3] I. 1. 12. [4] I. 1. 13.
[5] I. 1. 17. [6] I. 1. 19. [7] *Ibid.* [8] I. 1. 20.
[9] Cf. I. 6. 5: ". . . qualitatem moralem operativam, qua quis praestare aut pati quid tenetur."
[10] I. 2. [11] I. 3. [12] I. 4. [13] I. 5.

Further, the law-giver, as well as the law, ought to be known. The use of reason shows that the author of the universe is the author of natural law.[9] Civil laws are made known to subjects by formal promulgation; but natural laws are apprehended by reflecting on the intrinsic significance of human nature. The obligatory character of laws does not depend on the consent of the subjects—unless it be implicit consent, as when a man agreeing to the sovereignty of another is supposed to have agreed at the same time to all his future acts.[10] The sovereign must have understanding as to the fitness of his prescriptions, and sufficient strength to enforce them by penalties.

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[1] I. 6.

[2] Pufendorf refers to and adopts Hobbes's distinction between law and counsel (*De Cive*, XIV. 1).

[3] I. 6. 1: "Lex est eius, qui potestatem habet in eos quibus praecepit." I. 6. 4: ". . . decretum quo superior sibi subiectum obligit, ut ad istius praescriptum actiones suas componat."

[4] *De iure belli et pacis*, I. 1. 9-10.

[5] I. 6. 8: "Sequitur ergo, ut ille obligationis sit capax, qui et normam praescriptam potest cognoscere, et voluntatem habet intrinsece liberam, et in diversa flexilem; quae tamen, ubi norma per superiorem fuerit imposita, sentiat ab eadem sibi non esse discedendum."

[6] I. 6. 10. Here he criticises Hobbes's view, *De Cive*, XV. 5.

[7] I. 6. 12.

[8] I. 6. 12: "Omnino agnoscendum est, non solas vires sufficere, ut mihi ex alterius voluntate obligatio nascatur; sed accedere insuper oportere, ut aut ab isto insignia quaedam bona sint in me profecta, aut ut ipse ultro in eiusdem directionem consenserim."

[9] I. 6. 13.

[10] *Ibid.*

Thus, every law consists of two parts, declaratory (defining what is to be performed or omitted) and "vindicative" (the penal sanction).[1] The sanction of law must consist rather in punishments than in rewards; so that the view of Cumberland, in admitting the latter, is not sound.[2]

In respect to its origin, law is divine or human; in reference to its matter, it is natural or positive.[3] Natural law is that which so necessarily relates to the rational and sociable nature of man that human society, honest and peaceful fellowship could not exist without it[4]; that is, it has such virtue as makes for the good of mankind. Another reason for calling it so is that it is recognisable by the common intelligence of men contemplating universal human nature. On the other hand, positive law (called by some voluntary law) is that which emanates from the will of the law-giver, and varies according to the needs and circumstances of communities. Human law in the strict sense is only positive, and hence susceptible to abrogation; natural law is immutable.

Pufendorf ends the first book with a discussion on the qualities of moral actions.[5] He examines in what the goodness or evil of actions consists,[6] the justice of actions,[7] universal and particular justice,[8] justice as distributive[9] and commutative.[10] Injury is an intentional unjust action[11]; any harm ("laesiones") done inadvertently or unwillingly is not an "injury."[12] No injury is done to any man who wills it ("volenti non fit iniuria").[13] The view of Hobbes, urges Pufendorf, that an injury can be inflicted only on one with whom a compact has been made is imperfect.[14]

2. **State of Nature; Natural Law.**—The natural state of man is that in which we may conceive him to be placed "by birth itself," apart from all inventions and institutions either human or inspired by God[15]; that is, men would owe obedience neither to each other nor to a common lord.[16] In this state the rights of man relate to the instinct of self-preservation and independence; and he is bound to others simply in virtue of the tie resulting from natural resemblance. Pufendorf holds that Hobbes cannot have meant that each has unlimited licence; but that each has the liberty to provide for the preservation of his life, and has the right to act as he likes—if in accordance with the light of reason. Besides, the human race has never been and cannot be in a state of nature pure and simple. Against the state of nature Pufendorf sets "accessory states," of which the chief are marriage, relation of father and son, that of master and servant, the state of a citizen or member of a civil society. There cannot be any such natural liberty to man as shall

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[1] I. 6. 14. [2] *Ibid.* [3] I. 6. 18.

[4] *Ibid.*: "Quae cum rationali et sociali natura hominis ita congruit, ut humano generi honesta et pacifica societas citra eandem constare nequeat."

[5] I. 7. [6] I. 7. 3. [7] I. 7. 6. [8] I. 7. 8. [9] I. 7. 9.

[10] I. 7. 10. [11] I. 7. 15. [12] I. 7. 16. [13] I. 7. 17. [14] I. 7. 15.

[15] II. 2. 1: "In qua homo per ipsam nativitatem constitutus concipitur, prout abstracta intelliguntur inventa, atque instituta humana, aut homini divinitus suggesta, quibus aliam velut faciem vita mortalium induit." [16] II. 2. 5.

exempt him from the obligations of natural law or of divine commands. To live without law is inconsistent with human nature.[1] Government, indeed, is natural; it is the design of nature that men shall constitute governments among themselves.[2] The establishment of societies and of positive law is inevitable. Further, the state of nature is one of peace and not of hostility; it is not opposed to a social life.[3] Pufendorf emphasises that the question is the natural state not of animals governed by mere impulse and inclination, but of man endowed with reason (*ratio*)—the controller of all his other faculties—which even in a natural state has a common, steadfast, uniform measure to go by, viz. the nature of things.[4] Reason does not suggest to man that only his particular interest shall be the guide of his conduct. Indeed it dissuades him from making war, or adopting other violent measures, without provocation. It points out his fundamental obligations, such as to respect the liberty and possessions of others, to perform faithfully all engagements entered into, to promote spontaneously the interest and happiness of others when a superior obligation does not intervene. Thus peace depends solely on those obligations binding men as reasonable creatures and does not owe its origin to agreements and conventions. The latter may well serve as solemn protestations to confirm explicitly the subsistence of mutual rights and duties, or even to establish closer unions, *e.g.* friendship, but they really superadd nothing substantial to the obligations of the law of nature.[5] Still it must be confessed that in practice reason does not always exercise perfect and exclusive sway; the prevailing passions of men have been potent enough to drive them to crimes and unjust wars in spite of divine teaching; so that as natural peace is uncertain it must be strengthened by special provisions.[6]

Natural law is universal, in that it is binding on the entire human race, *qua* human. It is perpetual, and not subject (like positive law) to the changing circumstances of time and place.[7] Pufendorf rejects Ulpian's definition, which was adopted in the *Digest* and *Institutes* of Justinian: "Ius naturale est, quod natura omnia animalia docuit." As reason is not common to man and beast, so law cannot be. We must suppose the Roman jurisconsults to have spoken figuratively.[8] Those who refer the law of nature to brutes, on the ground that they are seen acting now and then with some appearance of regularity and design, abuse the term law by an undue and unnecessary application[9]; for such acts of the lower creatures are far from corresponding to the totality of human action and obligation.

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[1] II. 1.

[2] II. 2. 4: "Naturale est equidem imperium, i.e. naturae intentio fuit, ut homines imperia inter se constituerent."

[3] II. 2. 5: "Nam status naturalis et vita socialis sibi proprie non opponuntur."

[4] II. 2. 9: "Quae etiam in naturali statu communem, eamque firmam et uniformem habet mensuram, rerum nempe naturam. . . ."

[5] II. 2. 11.

[6] II. 2. 12.

[7] II. 3. 1.

[8] Cf. the explanation offered in the present writer's *International Law and Custom of Anc. G. and R.*, vol. i. pp. 83 *seq.*

[9] II. 3. 2.

Prior to the imposition of law, actions are to be deemed indifferent; for the legitimacy of conduct depends on the existence of law. God in creating man intended that his actions should not all be indifferent, and therefore at the same time constituted a law for his nature. Those who hold (like Grotius [1]) that the virtue or turpitude of actions determines natural law are landed in a vicious circle.[2] [But this is not the position of Grotius; for he would say that the essential honesty or baseness of the acts commanded or forbidden by natural law comes from the harmony or disagreement, as the case may be, with a reasonable and social nature. And this necessity is not independent of divine will. Thus Pufendorf and his predecessor are on this point substantially at one.] It cannot be said that natural law is common to God and man. It would be impious to hold that it can contain any rule contrary to divine justice and sanctity; but there is no perfect resemblance between the rule of human actions and the order according to which God acts in regard to His creatures. For divine omnipotence is absolute, is necessarily independent of all law and obligation. God *cannot* but observe His promises, and men *ought* not but to observe theirs. Hence human promises involve obligations, but divine promises are made good only through grace. The intrinsic nature of things and the relationships between them depend on divine determination.[3]

Is natural law due to general consent? Those who attribute the recognition of the rules of natural law to the consent of mankind argue *a posteriori*, and Hobbes [4] (as Pufendorf points out) has demonstrated the untenability of this doctrine; for unanimity would in that case be indispensable, yet there are striking differences in opinion and custom,[5] and even amongst the most famous people on record diversity and contrariety of manners and institutions are observable.[6] Besides, to extract the law of nature from practice involves a further difficulty, as every nation has a large element of positive law; also, inveterate custom often assumes the semblance of natural reason.[7] Nevertheless, we are not on this account to infer that natural law has no existence. Nor can we hold that convenience and profit alone are its foundation. Utility is of two kinds: that which appears such to the depraved judgment of ill-composed affections ("affectuum male compositorum pravo iudicio") which are so capricious and transitory, and that which is universally such, assuring constancy and permanence ("quod in universum tale est, et ad diuturnitatem facit"). Actions done in conformity with the law of nature have a double excellence: they conduce to the promotion of honour and good credit of men, and they contribute to their happiness by furthering their true interests and advantage. On the other hand, actions done contrary to the law of nature are always base and dishonest, and though they now and then bear some appearance of profit and pleasure, yet these charms soon vanish and are replaced by evils and misfortunes. If every man considered only his own private advantage regardless of others, confusion would ensue.[1] The adoption by States o different laws on the ground of utility does not negative the existence and efficacy of natural law.[2]

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[1] Cf. *De iure belli et pacis*, I. 1. 10. 1.
[2] II. 3. 4.
[3] II 3. 6.
[4] *De Cive*, II. 1.
[5] II. 3. 7.
[6] II. 3. 8.
[7] II. 3. 9.

Does the law of nature appear from the end of creation? It cannot be held that divine and human justice have a common measure, that the order prescribed by God to man (namely, the observance of the law of nature) indicates the end which He proposed in creating the world.[3]

The principles of natural law are revealed by the light of unperverted reason implanted by God in man. Not that these are complete entities imprinted, as it were, on men's minds at birth, and expressible in distinct propositions as soon as the faculty of speech is acquired and without further instruction or meditation;[4] the observation of St. Paul[5] that natural law is written in the hearts of men is merely figurative. But the capacity to obtain a knowledge of it is imparted to men.[6] By contemplating the significance of human life they can discover a necessity of living agreeably to this law, and discern those principles by which its precepts may be effectively demonstrated, without fearing that any one may foist upon them for natural law "the ravings of his ill-purged brain or the disordered passions of his mind."[7] Thus the true and essential nature of man is the origin of natural law; but owing to the "summa imbecillitas atque naturalis indigentia" of man as an individual, he is compelled to associate with others and admit the common good to be his good.[8] Hence the fundamental principle of this law may be formulated thus: Every man ought, as far as in him lies, to promote and preserve a peaceful sociableness with others, in harmony with the essential disposition and purpose of the human race.[9] Sociableness does not imply a mere propensity to join in any society whatever, *e.g.* irregular or ill-constituted, but rather a disposition to effect a union based on benevolence, charity, peace, and involving, as it were, "a silent and secret obligation." Now the duty to seek a common end of necessity implies the duty to carry out the means leading thereto. Therefore all actions which conduce to the advancement of this mutual sociableness are commanded by the law of nature, and all those detrimental to it are forbidden.[10] Pufendorf points out that this doctrine is in agreement with that of Cumberland,[11] and that

[1] II. 3. 10. [2] II. 3. 11. [3] II. 3. 12.

[4] II. 3. 13: "Animis hominum ab ipsa nativitate congenita, et velut impressa esse iuris naturalis saltem generalia praecepta."

[5] Rom. ii. 15. [6] Cf. Cumberland, *De legibus naturae, Proleg.* 5-7.

[7] II. 3. 13: "Ne quis cerebri sui male purgati deliria, aut incompositam animi cupidinem pro lege naturali venditare possit."

[8] II. 3. 14.

[9] II. 3. 15: "Cuilibet homini, quantum in se, colendam et conservandam esse pacificam adversos alios socialitatem, indoli et scopo generis humani in universum congruentem."

[10] *Ibid.*: "Omnia, quae ad istam socialitatem necessario faciunt, iure naturali praecepta, quae eandem turbant aut abrumpunt, vetita intelligi." [11] *Op. cit.* I. 4.

Hobbes's view[1] has been by some writers too rigorously interpreted. But he cannot accept the observation of Grotius[2] that natural law would still obtain even if God did not exist; for the obligations arising therefrom are imposed by divine Providence.[3] The underlying sanction is referable to His will.[4]

Is there a law of nations distinct from the law of nature? Pufendorf says he accepts the view of Hobbes,[5] who holds that natural law is divided into the natural law of man and the natural law of States (*i.e.* law of nations). Both are made up of the same precepts; for States assume, as soon as they are formed, the personal properties of men. Consequently there is no positive law of nations proceeding from a superior. The provisions due to the needs of human nature necessarily relate to natural law. Most of the matters of the *ius gentium* (*e.g.* contracts, modes of acquisition, etc.) dealt with by the civilians belong rather to the law of nature or to municipal law. Indeed, the legal provisions of many nations are found to agree on various points which do not depend on the universal reason of mankind; but such similar laws, not arising from any fundamental universal obligation, are not to be erected into the category of positive law of nations, for they may be altered or cancelled at the discretion of each State quite independently of the others. And so, too, in the case of customs, *e.g.* as to relaxations in war; for a belligerent waging war in a just cause may disregard these and observe simply the law of nature, which alone imposes an indefeasible obligation. In restraints and mitigations dependent on tacit consent, it seems reasonable that either party should be free to absolve himself from them by making a declaration to that effect, which would *ipso facto* discharge the other side too. Thus time and the prevalence of contrary customs tend to eliminate such observances as are due to the mere consent of peoples and not to natural law. Grotius regards some rights, *e.g.* those of embassy, burial, etc., as forming part of the voluntary or the special class of law of nations; but this division is not really necessary, as the essential rights of legation spring from the duty to promote peace, and those of burial from the duty to observe humanity; and both these duties are already imposed by natural law. International compacts infinite in number, diverse in character, and temporary in effect as they are, form the subject of history rather than the basis of law; though, of course, the observance of good faith in such transactions is commanded by the law of nature. Customs, in so far as they have universal applicability and involve definite legal obligations, are attributable directly or indirectly to the prescriptions of natural law; so that by referring customs to the latter as their veritable progenitor greater authority and a higher sanction are assigned to them, than by deriving them from mere conventions of peoples.[6]

This distinction leads to the division of duties, so far as they concern others, into absolute and conditional, or duties of perfect obligation and those of imperfect obligation. (Natural law governs also man's behaviour towards himself.) Absolute duties bind all men at all times and in all conditions, independently of human institutions. Conditional duties presuppose certain civil forms and methods to have been voluntarily constituted; for example, certain acts may be performed at pleasure, but when once performed a moral necessity or obligation supervenes by virtue of some precepts of the law of nature, or the manner and circumstances of the act are thereby adjusted and determined. Thus there is a constant relationship between natural law and positive law; to violate the latter may well involve an infringement—mediate or indirect—of the former. But positive law does not form an intrinsic portion of natural law so as to amount to identity; natural law, indeed, commands obedience to the sovereign, but his dominion is exercised in virtue of his subjects' consent, *i.e.* through a binding engagement. There is this great difference ever to be considered: natural conditional laws are derived from the universal constitution of the human race, whilst civil positive laws depend only on the particular interests of community, or on the good pleasure of its legislator.[1]

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[1] *De Cive*, I. 2.

[2] *Proleg.* 11.

[3] II. 3. 20.

[4] II. 3. 21.

[5] *De Cive*, xiv. 4, 5.

[6] II. 3. 23.

3. **Certain Elementary Rights and Duties; Civil Societies and Sovereignty.**—After considering in general the duties of man towards himself, as to the care of his body and the improvement of his mind,[2] and in particular the primary duty of self-defence,[3] Pufendorf examines the doctrine of necessity.[4] Most laws, especially positive, are deemed to except circumstances of urgent necessity, *i.e.* to lose their binding force when their observance would obviously be attended by some evil "destructive of our nature, or exceeding the ordinary patience and constancy of human minds," unless, however, the case in question be expressly included in those laws. But apart from exceptional cases, the rule is that no one may arrogate to himself, on the ground of necessity, the liberty to violate a positive law. Similarly, a command of natural law may be disobeyed when one, through no neglect or default of his own, is placed under extreme necessity; but not so when the command is so absolute as to require its fulfilment even at the price of laying down one's life. In no case whatever can necessity make it permissible to offend against God.[5]

Next, Pufendorf sets forth various common rights and duties regarding both municipal relationships and international. All men are to be accounted by nature equal.[6] If any injury is done, due reparation must be made.[7] The troops of another State have the right of free passage over our territory; but if they are in large numbers, a guarantee (*e.g.* hostages) may be demanded by us to ensure the safety of our subjects and their property. In the absence of special compacts or concessions, natural law does not give such right if the troops are proceeding against our friendly neighbour; hence it is our duty to prevent their passage if we have power enough to do so, unless our opposition would bring on us a disastrous war. In other words, necessity would excuse the non-performance of our duty.[1] Free access to our shores is to be allowed to strangers having no hostile intention and suffering no contagious diseases.[2] The admission of aliens and the kind reception of travellers, if their purpose be honest, are duties of natural law.[3] The settlement of exiles ought to be permitted if they submit to our government and conduct themselves peacefully.[4] Further, foreign citizens have the right of intermarriage (*ius connubii*)[5] and of commercial intercourse (*ius commercii*) with us, subject to such restrictions as State policy or economic reasons may demand.[6]

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[1] II. 3. 24.

[2] II. 4.

[3] II. 5.

[4] II. 6.

[5] II. 6. 2.

[6] III. 2.

[7] III. 1.

After examining the nature of promises and pacts, the consent required therein, their matter and conditions, and the doctrine of agency,[7] the author inquires into the obligations attending speech and its expression,[8] and discusses various moot problems arising therefrom, *e.g.* when untruths are not to be considered perfidious or criminal,[9] how far part of the truth may be legitimately concealed,[10] to what extent simulation and mental reservations are permissible,[11] in what circumstances governors of States may issue false reports,[12] whether it is lawful to send false communications to an enemy,[13] whether a guilty person may deny the charge, and what his advocate may do in such a case.[14] Then he deals with the legal significance of the oath, its interpretation and perjury,[15] with the origin and object of property or dominion.[16] As to ownership of the sea, Pufendorf observes that many of the writers engaged in the controversy were animated more by affection for their country than by regard for truth. The main ocean cannot be under any one's dominion; its illimitability makes it impossible to defend its possession effectively, and, moreover, the use of it is inexhaustible and therefore sufficient for all. The world was given by God to the human race in general, and all men have by nature equal rights. Dominion, however, may be exercised over parts of the sea, *e.g.* territorial waters, and other particular regions when acquired in virtue of treaties with neighbouring and other States concerned.[17] Thus freedom of navigation is the right of all, for no one people may obtain such a power over the seas as will justify the exclusion of all others from the same benefit. Ordinary rights may be modified by compacts, but not if prejudicial to a third party.[18]

These questions lead to the exposition of such matters as modes of acquiring ownership, occupation, rights over another's property, transference of property, testaments, intestate succession, usucapion, prescription, obligations arising from the right of property.[19] Then follows an analysis of the conception of price,[20] and of the nature of contractual transactions.[21] As regards

[1] III. 3. 5.
[2] III. 3. 8.
[3] III. 3. 9.
[4] III. 3. 10.
[5] III. 3. 13.
[6] III. 3. 11.
[7] III. 5—III. 7. 9.
[8] IV. 1.
[9] IV. 1. 9.
[10] IV. 1. 11.
[11] IV. 1. 12-14.
[12] IV. 1. 17.
[13] IV. 1. 19.
[14] IV. 1. 20-21.
[15] IV. 2.
[16] IV. 4-5.
[17] IV. 5. 5-9.
[18] IV. 5. 10.
[19] IV. 6-13.
[20] V. 1.
[21] V. 2.

international relationships, Pufendorf observes that there is an implied agreement in wars, at least after all terms of peace have been rejected, that whichever party conquers shall have the right to impose laws on the vanquished ; so that a defeated belligerent cannot urge as a ground for the non-fulfilment of a treaty that he was forced to enter into it through fear—for he who takes the field when the dispute in question may be decided otherwise is deemed to commit its decision to the sword. There must be no subtle evasions in the interpretation of contracts. In a state of nature controversies cannot be settled by judges, but by submission to mediators and arbitrators.[1] The sixth book deals with the institutions of marriage, paternal power, and master's authority.[2]

Finally, the author discusses the establishment of civil societies and sovereigns, and the rights and incidents of sovereignty. Men are induced to set up organised communities in order to protect themselves from injury.[3] To secure lasting peace more is needed than the law of nature and the temporary intervention of conciliators and arbitrators. Besides, in a state of nature the arbitrator is not vested with authority to compel the contending parties to accept his judgment, and so to prevent the adoption of forcible measures.[4] The greatest part of mankind have regard to the immediate present rather than to the future ; they act not with rational motives but by wild impulse.[5] Thus by a union of wills and strength, produced by intervening covenants, a civil State and a sovereign authority are erected. In the conception of a civil State, Pufendorf emphasises the corporate existence, the *persona* as the essential. In a monarchy, the will of the prince is the will of the State ; under other forms of regularised government, the will of the State is represented by that of the majority of the subjects ; but both cases may admit of limitations.[6] The author then inquires whether the majesty of princes is immediately derived from God,[7] he points out that civil authority cannot be simply the effect of war, as it must exist before war is made,[8] and discusses the forms of government,[9] the ways of acquiring sovereignty (especially monarchical),[10] the parts of sovereignty and their natural connection (*e.g.* the legislative power, the judicial, right of taxation, power to make war and peace and to enter into treaties and alliances, etc.),[11] the duty of the sovereign,[12] his power to direct the actions of his subjects and to dispose of their persons and property in behalf of the commonwealth and in criminal cases,[13] to determine their rank,[14] and his power over the kingdom as the "public patrimony."[15] His authority is, however, subject to various restrictions, *e.g.* he cannot alienate the kingdom or part of it or the sources of public revenue, he cannot make it a fief, or mortgage it without the consent of his people.[16]

4. **The Law of War.**—This part of Pufendorf's subject has by no means

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[1] V. 2. 13.
[2] VI. 1-3.
[3] VII. 1. 7.
[4] VII. 1. 9.
[5] VII. 1. 11.
[6] VII. 2.
[7] VII. 3. 3.
[8] VII. 3. 5.
[9] VII. 5.
[10] VII. 7.
[11] VII. 4.
[12] VII. 9.
[13] VIII. 1—3.
[14] VIII. 4.
[15] VIII. 5.
[16] *Ibid.*

as great value as the corresponding portions of Gentilis or Grotius, the latter of whom he follows very frequently. Many important and interesting questions are passed over, and some others are presented in a somewhat superficial analysis. Nevertheless, taking all failings into account—his too great readiness to draw conclusions, insufficiently considered, from his hypothetical principles, his almost exclusive concern with abstract relationships and disregard of actual inevitable phenomena—it must be admitted that his exposition occupies no mean place in the history of the law of war.

Starting from a point of view different from that of Gentilis and Grotius, Pufendorf's definitions of peace and war are wider, less concise, and less definite than those of his great predecessors. Peace is that state in which men live quietly together, untroubled by violence, and voluntarily discharge their obligations.[1] War is the state of men engaged in offering and repelling injuries, or endeavouring forcibly to recover what is their due.[2] Peace is the normal state of mankind; the law of nature was given to men principally to establish and preserve peace. Only by an extraordinary indulgence does it permit them to make war, *i.e.* when natural law is itself wilfully violated, as by unjust aggression (defensive war) or refusal to restore what is naturally due to them (offensive war).[3] In any case peace is necessarily the price and reward of war.[4] But such alleged causes of war must be manifest, and free from doubt and uncertainty. Pacific settlement must be tried first by negotiation, or arbitration, or by lot.[5] Following Grotius, he mentions certain unjust causes of war, of which some are obviously unlawful (*e.g.* avarice, ambition, desire to extend dominion), and others have a mere colour of lawfulness (*e.g.* fear due to the increasing might of a neighbouring State). Mere suspicion is not enough; there must be certainty that designs are formed against us. To consider utility a ground for war is "impudens." The inhuman practices of barbarians (*e.g.* cannibalism, immolation) are not sufficient cause, unless directed against our subjects who had done them no injury.[6] It is legitimate to use stratagem and fraud against the enemy, provided there be no treachery, or violation of a compact or good faith thereby.[7] But it is difficult to settle the limits of hostile conduct; for every war appears to involve an understanding of this kind: "Try your strength and we will try ours."[8] Retribution cannot (as in civil tribunals) always be measured by the offence. But the law of humanity not only prohibits the infliction of unnecessarily excessive injury on the enemy, but demands generosity on the part of the victor[1]; hence natural law requires the observance of moderation, "temperamenta" (as Grotius had insisted).

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[1] I. 1. 8: "Pax . . . est status ille, quo homines inter se quiete, et citra iniurias violentas agunt, et quae invicem debent, velut ex obligatione et ultro praestant."

[2] *Ibid.*: "Bellum . . . est status iniurias violentas mutuo inferentium et propulsantium, aut quae sibi debentur vi extorquere nitentium."

[3] VIII. 6. 3.

[4] VIII. 6. 2: "Ita tamen natura permittit bellum, ut id gerens pro fine sibi constituere pacem debeat."

[5] VIII. 6. 4. [6] VIII. 6. 5. [7] VIII. 6. 6.

[8] VIII. 6. 7: "Tenta quid ipse valeas, ego itidem omnia experiar."

In a state of nature all men have the right to conduct hostilities, but when States are constituted the right is transferred to the sovereign authority.[2] War may be divided into solemn (or formal) and less solemn.[3] The first is formally proclaimed, commenced, and directed by the supreme authority on both sides; in which case the belligerents are considered "iusti hostes." The second is not publicly declared, or is conducted by or against private subjects; in the former case it might be such an irregular proceeding as a depredatory incursion, in the latter intestine warfare.[4] No community, civil or other, is responsible for acts of particular members, unless there be some culpable act or omission of its own, *e.g.* connivance at or acquiescence in crimes committed by its subjects, or refusal to surrender fugitive offenders.[5] A foreign State refusing "to administer justice" is liable to reprisals at the hands of the injured party, who may seize the persons and property of the former's subjects.[6] War may be justly made on behalf of other peoples, if the auxiliary State is under some tie or obligation to them (*e.g.* as allies, or confederates), and the assisted State itself has just reasons for war. Otherwise, it is unlawful to aid one belligerent against another, as all men equally deserve favour; and it is contrary to the natural equality of mankind to force oneself upon the world as a judge and decider of controversies. To take up arms in defence of subjects of a foreign State against their sovereign's oppressions is lawful, provided they themselves may rightfully oppose the tyranny and cruelty of their governors.[7] As to declaration of war, Pufendorf accepts without qualification the doctrines laid down by Grotius.[8]

With regard to the treatment of the enemy and his property in general, Pufendorf says it is not possible to lay down rules to modify the law of nature and impose clearly defined limits to cruelty and outrage; it is safer to leave these matters to the conscience of the combatants. Besides, it is understood between them, "tacito quodam pacto," that they are at liberty to increase or abate the heat of the war.[9] But there are various mitigations, as Grotius insisted.[10] May assassins be employed against the enemy? Yes, in the case of rebels, pirates, highwaymen. Good faith is to be maintained between the belligerents; but it does not of necessity follow that the adversary's subjects may not be induced to desert.[11] In a legitimate solemn war natural law confers on a belligerent the right to take possession of such property of the enemy as will amount to the original claim, together with an indemnity to cover damages and expenditure, and to exact other securities from the enemy. Moreover, according to universal practice a combatant becomes the absolute proprietor of everything taken from the enemy, even though it exceeds the original claim. But to give the victor a right of property, there must be a pacification and agreement; otherwise the right is deemed to continue in the old owner, who may justly regain it when he is strong enough to do so.[1] The booty goes to the sovereign, who may share it amongst his soldiers, after restoring what was due to any one on whose behalf the war was begun. Mercenary soldiers have no right to anything but their pay; and private adventurers are not entitled to anything other than what the sovereign decides to allow them.[2] Things incorporeal can only be acquired along with the subjects—persons or things—they inhere in. The capture of a person having rights over others does not, without their consent, effect a transference of those rights to the captor. Thus if a king is taken prisoner, the captor does not thereby acquire his kingdom. Similarly, taking a husband gives no right over his wife or children. A prisoner's rights in things are not acquired unless those things are taken along with him[3]; nor are his actions and credits unless he consent to make them over—though such consent may be extorted by threats.[4] Dominion over the vanquished is obtained if they promise expressly or tacitly to acknowledge their conqueror as their lord, and he for his part undertakes not to treat them any longer as enemies.[5] Finally, prisoners of war recover their former status if, not being under any obligation of faith to the adversary, they escape and return to their country. If during the war captured things, whether movables or immovables, are retaken, they are to be restored to their former owners.[6] And a whole nation regains its liberty when it shakes off the enemy's yoke, either by its own strength or by the aid of allies or friends. But should a third State by warlike proceedings made in its own name and for its own advantage wrest a subjugated and enslaved nation from its adversary, dominion over that nation is transferred to the new victor.[7]

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[1] VIII. 6. 7: "Ast vero lex humanitatis non id solum considerari vult, quid hostis citra iniuriam possit pati, sed et quid humanum, adde et generosum victorem facere deceat."

[2] VIII. 6. 8.

[3] Cf. Grotius, I. 3. 4. 1.

[4] VIII. 6. 9.

[5] VIII. 6. 12.

[6] VIII. 6. 13: "Violentae executiones in cives aut bona civium alterius reip., quae iustitiam administrare detrectat."

[7] VIII. 6. 14.

[8] VIII. 6. 15. Cf. *De iure belli et pacis*, III. 3.

[9] VIII. 6. 16.

[10] *De iure belli et pacis*, III. 4, 5.

[11] VIII. 6. 18.

The hostilities of the belligerents may be "confined," or suspended, or entirely terminated by means of compacts and conventions.[8] But it is doubtful whether validity can be claimed for truces and armistices, or their violation regarded as an infringement of natural law. For the proper use of good faith is to advance peace; and such engagements may tend, on the contrary, to protract the war. Though active hostile proceedings are in abeyance the state of hostility continues, and in itself gives a combatant unlimited liberty to take all the advantages he can against his opponent.[9] It seems absurd to employ faith without thoughts of restoring or preserving peace thereby; it is contradictory to a belligerent's actions to make a protestation not to use the liberty of an enemy whilst a state of war subsists. Thus, these compacts are to be measured simply by the use and advantage derived from them, "eadem utilitate aestimari." A belligerent is not bound to make use of the utmost rigours permitted by the law of war; it is generous and noble to spare an enemy when he may be quite legitimately dispatched. But if we do not obtain our rights by pacific measures, and war becomes necessary, then the shortest way to attain that end is the one most conformable to nature. Hence such conventions as tend only to moderate and qualify hostilities and prolong warlike relationships are repugnant to nature.[1] In the more civilised parts of the world, however, custom has established the use of truces and armistices for various purposes. A truce being temporary in effect leaves undecided the dispute which caused the war.[2] Therefore when the engagement expires, there is no need to make a new proclamation of war; nevertheless, if not obligatory, it is at least honourable to do so when the truce was of long date and has entirely put a stop to the progress, and transformed the complexion, of war, or when there is an express stipulation that conferences be held to determine the difference in question.[3] Of course, if one side commit a breach, it is by no means incumbent on the other to make any declaration before taking up arms again.[4] Truces may be established either by explicit agreement, or impliedly by conduct—though merely to forbear from hostilities for a short time is not necessarily giving a truce.[5] What liberties does a truce allow? Acts purely of a defensive character are lawful, even though the truce was obtained for another purpose. For example, if a cessation of war be agreed upon in order to bury the slain, it is not on that account unlawful to retreat to a more secure position, or to repair or raise a fortification; and so also if a besieged town request a truce for the purpose of deferring the assault, it may also receive fresh supplies of men and provisions.[6] On the expiration of a truce subjects of a belligerent found on enemy territory may be made prisoners.[7]

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[1] VIII. 6. 20.
[2] VIII. 6. 21.
[3] VIII. 6. 22.
[4] VIII. 6. 23.
[5] VIII. 6. 24. Cf. Grotius, III. 8.
[6] VIII. 6. 25.
[7] VIII. 6. 26.
[8] VIII. 7. 1.
[9] VIII. 7. 2: "Nam hostilis status utique in se dat licentiam nocendi alteri in infinitum."

In this part of the subject Pufendorf follows Grotius to a very large extent; indeed, he very frequently mentions a heading and merely refers to his predecessor for argument and solution. When he differs, however, his opinions are generally less progressive than those of the great Dutch jurist, on account of his too stringent adhesion to *a priori* assumptions attributed to the exigence of natural law, and owing to his scanty consideration of the actual development of international relationships. In his advocacy of the lawful severities of war, as against the numerous relaxations proposed by Grotius and others, he supports his views—apart from insistent appeals to elementary principles which he considers incontrovertible, but which he sometimes applies too mechanically—almost entirely by the citation of ancient examples.

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[1] VIII. 7. 2: "Adeoque ubi per pacta illa, vim hostilem temperantia non nisi bellum alatur, naturae eadem repugnare manifestum est."

[2] VIII. 7. 5.
[3] VIII. 7. 6.
[4] VIII. 7. 12.
[5] VIII. 7. 7.
[6] VIII. 7. 10.
[7] VIII. 7. 11. Cf. Grotius, III. 21.9.

5. **Treaties of Peace, Alliances, and other Conventions.**—Are treaties of peace invalidated through fear? Grotius replies in the negative,[1] on the ground that according to the common practices of nations such compacts are not held to be vitiated; if they were, it would be impossible to put an end to wars, or even to moderate their severity. Pufendorf, however, contends that what is got through extortion and the ravages of an unjust war cannot conscientiously be retained; hence it is allowable "to plead an exception of fear" against an unjust conqueror, who forced his adversary to consent to rigorous demands and accept a hard peace. But it is otherwise if the combatants agreed to let the sword alone settle their difference.[2] Is a treaty of peace made by a sovereign with his rebel subjects binding?[3] Pufendorf maintains that to enter into a compact with them implies *ipso facto* that their offence is pardoned; and that they may well claim that their promised obedience is conditional on the sovereign's observance of the engagement.[4] Such a treaty may be of the nature of a charter or a fundamental law of the constitution. Further, private property may be ceded on pacification, in virtue of the prince's right of "dominium eminens," which may be exercised under stress of necessity and for the public interest. But the State is bound to make good as soon as it can such losses of its citizens. As to hostages given for ensuring the ratification of peace, Pufendorf accepts what Grotius says,[5] and emphasises that if the hostage is the prince's heir and successor another is to be substituted for him on that prince's demise.[6]

With regard to treaties and conventions ("foedera") entered into apart from war, they may be divided into two classes according to their subject-matter; firstly, those asserting rights and obligations which were already conferred or imposed by natural law; secondly, those superadding certain special provisions to the general duties of natural law, or modifying and restricting those general duties to specifically defined circumstances. The first are treaties of friendship, providing merely for the exercise of mutual civility and humanity. But now that nations are more civilised and "polished in their manners" than the ancient peoples who made pacts of this kind, such treaties are really redundant; for it is a disgrace to human nature that people outside barbarism should establish conventions whose purport does not go beyond what is incontestably demanded by natural law.[7] The second class comprises alliances which may be, from one point of view, either equal or unequal, and, from another, real or personal. A personal alliance is one made with a sovereign in his personal capacity, and hence expires with him. A real alliance is one made irrespectively of the life of the contracting sovereign, and therefore has permanent effect; *e.g.* when it is expressly mentioned that it is to be perpetual, or it is made for the prince and his successors, or when its duration is limited to a certain period. In case of doubt, a favourable compact (*e.g.* for the advancement of commerce) may be construed as real, an onerous one as personal. In these questions Pufendorf follows the Grotian doctrines, but he considers them inadequate, as it remains to be determined when a prince's successors are bound by the treaties entered into in the preceding reign. In general, then, a successor is bound (1) in the case of a *peace* made by his predecessor, (2) in agreements by which the late sovereign transferred any right to a third party, (3) when either contracting party has performed his part and the other has failed in his through death, and (4) in engagements where nothing has been done on both sides, or where the performances have been equal. However, it has become a custom to renew, upon a new succession, the treaties and alliances—even though real—entered into by the late prince. But (as Pufendorf remarks in contradictory terms) a successor has the right to disregard a previous league which he thinks is now grown useless and unprofitable to the State.[1]

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[1] *De iure belli et pacis*, II. 17. 19; III. 19. 11.

[2] VIII. 8. 1.

[3] Cf. Grotius, III. 19. 6.

[4] VIII. 8. 2.

[5] *Op. cit.* III. 20, 52, etc.

[6] VIII. 8 6

[7] VIII. 9. 1-2.

If a contracting prince is exiled or deposed, is he entitled to call on the other party for performance of the compact? Grotius[2] holds that he is entitled, if he has been unjustly deposed: for he has still a right to his kingdom though he has lost possession of it. But Pufendorf decides that if the treaty expressly provides for the protection of the prince's person and dynasty, he has a right to be aided to recover his position. On the other hand, if the object of the treaty is simply the advantage of the State, the case is doubtful; for aid that had been promised is presumed to have been promised against foreign enemies. Of course, a lawful sovereign may, in virtue of such a league, be assisted against a usurper.[3] Further, the author holds that the term "allies" includes not only those who were confederates at the time the league was made but also those subsequently taken into alliance[4]; that when compacts of limited duration expire, a tacit renewal is not necessarily to be supposed[5]; and then examines the nature of "sponsiones," and the results of their non-ratification by the sovereign authority.[6]

Next the private engagements of princes are considered. A sovereign may repudiate a disadvantageous contract made with an alien[7]; but one made with his subjects he is bound in honour, though not in law, to observe. If he gives the latter liberty to bring an action against him in his own Courts the suit proceeds rather on natural equity than on the civil law of the State.[1] Can he transmit a contractual obligation to his successors? If the kingdom is his "patrimony," his successor inherits his goods and possessions together with his liabilities; but if it is held merely as a usufructuary right, the successor is not so bound,[2] inasmuch as he derives his right to the throne not from the preceding sovereign, but from the people. In general, however, contracts of the prince are binding on the State, unless they are obviously absurd or unjust[3]; in a doubtful case the presumption is in favour of the prince. The grants and donations of a ruler cannot be revoked by his successor, provided they were made on good and fair grounds.[4]

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[1] VIII. 9. 6-8.

[2] *De iure belli et pacis*, II. 16. 17: "Sane cum rege initum fedus manet, etiamsi rex idem aut successor regno a subditis sit pulsus. Ius enim regni penes ipsum manet utcunque possessionem amiserit."

[3] VIII. 9. 9.

[4] VIII. 9. 10; following mainly the conclusions of Grotius, II. 16. 13; out the latter holds that future allies are not necessarily included.

[5] VIII. 9. 11.

[6] VIII. 9. 12.

[7] VIII. 10 2

Finally, Pufendorf discusses in what circumstances civil subjection ceases, and what the effects are of a change of sovereignty and of a dissolution of the commonwealth. If a prince dies without a successor, the citizens of the country cease to be subjects as such, but remain united to one another by the original bond and compact of society.[5] Subjection also terminates in case of permanent settlement in foreign territory.[6] Grotius thinks that such removal, if in large companies, is unlawful, in that it is inconsistent with the nature of civil society, but Pufendorf sees no reason for this contention, as civil society among men in general is not destroyed, though this or that State may thereby be dissolved. The decline of one State means the generation of another; what is lost in the one is gained in the other.[7] When men began to multiply, nature caused them to be divided into civil communities, but never ordained that this or that particular commonwealth should flourish and prosper for ever.[8] After examining the causes of loss of citizenship (*e.g.* banishment, surrender of subjects to an enemy),[9] Pufendorf points out that changes of government (monarchy, oligarchy, republic) do not necessarily affect the status of the people, nor are debts of the State thereby extinguished.[10] The acts of a usurper may be considered valid, so far as foreign relationships are concerned, for a foreign power need not question his title if the transactions are otherwise regular; but his unjust acts limited to the State may, on the expiration of his reign, be abrogated by a lawful authority.[11] A sovereign reigns and passes away, but the commonwealth subsists. It is dissolved only when the people are destroyed, or when the moral tie which unites them is entirely broken. Grotius holds that if through some desolation only a few inhabitants are left, they are not entitled to assume sovereign power or any of the rights consequent thereon [1]; but Pufendorf contends that if those few can effectively defend themselves against foreign invasions and possess sufficient resources for "growing up again" and remaining an independent nation, then they may legitimately claim and exercise the rights of the former people.[2]

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[1] VIII. 10. 6.

[2] According to the view of Grotius, II. 14. 10-11.

[3] VIII. 10. 8: "Contractus regum obligabunt civitatem, qui non manifeste absurdi aut iniqui sunt."

[4] Cf. Grotius, II. 14. 13.

[5] VIII. 11. 1.

[6] VIII. 11. 2. Cf. Grotius, II. 5. 24.

[7] VIII. 11. 4: "Sed unius corruptio alterius est generatio; unius decrementa alteri incremento cedunt."

[8] *Ibid.*: "Natura quippe civiles esse societates in genere humano iam multiplicato voluit; sed ut haec vel illa civitas perpetua, florensque subsisteret, nusquam iussit."

[9] VIII. 11. 6-9.

[10] VIII. 12. 1-2.

[11] VIII. 12. 3.

Conclusion.—Pufendorf's juristic writings enjoyed immense success. They were frequently reprinted, and translated in several languages; extracts, commentaries, and abridgments were issued in large numbers. For nearly a century the majority of continental writers on the law of nature and of nations, especially in Germany, acknowledged the leadership of Pufendorf, and adopted the lines marked out by him. Among the numerous adherents may be mentioned: in Germany, Christian Thomasius, Cocceji, Wernher, Wagner, Griebner, Koehler, Heineccius; in France, Barbeyrac, Richer d'Aube; in Denmark, Holberg; in Switzerland, Vicat, Burmalaqui, De Felice (the latter two being of Italian origin). As for Italy, Pierantoni observes that the theory of Pufendorf had no vogue in his country [3]; none the less, several later Italian writers produced works which unmistakably showed the influence partly of Pufendorf and partly of Wolf. On the other hand there were not wanting resolute dissentients, even in Germany; among these were the powerful adversaries of natural law, Samuel Rachel and Wolfgang Textor.

Leibnitz's disparagement of Pufendorf's philosophical and juristic capacity was entirely unmerited, and sprang rather from personal hostility than from a well-balanced appraisement of his work. The opposition between them first arose in connection with Pufendorf's well-nigh revolutionary pamphlet on the condition of the German Empire; the conservatism, the political timidity of Leibnitz ill harmonised with the progressive tendency, the aggressive spirit of Pufendorf; and the breach between them was aggravated by the triumph of the latter in the stirring controversy. The laconic dictum of Leibnitz: "Vir parum iurisconsultus et minime philosophus," [4] recalls Ben Jonson's valuation of Shakespeare's classical scholarship, and comes from an overweening sense of superiority in regard to a particular sphere. But the aphorism is characterised more by concision than by truth. To Leibnitz's harsh and unfair judgment is largely due the under-estimation of Pufendorf by many of his successors. Locke's high opinion, however, may serve as a corrective of that of Leibnitz. Sir James Mackintosh, too, says: "His treatise is a mine in which all his successors must dig."[1] And in recent times the eminent economic historian, Prof. Roscher, has expressed his emphatic dissent from the opinion of Leibnitz; indeed, he places Pufendorf also among the greatest politicial and economic writers.[2]

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[1] *De iure belli et pacis*, II. 9. 4.

[2] VIII. 12. 8.

[3] A. Pierantoni, *Storia degli studi del diritto internazionale in Italia* (Modena, 1869), p. 49: "L' intelletto italiano non s'immedesimò in tale epoca con detta scuola."

[4] *Opera*, ed. Dutens, vol. iv. pt. 3, p. 261.

In his various writings, especially in his legal work, Pufendorf does not show the genius, the penetration, the profound erudition of a Grotius, nor the practical sagacity, the argumentative skill, the power to grapple with actual conditions of a Gentilis. And in originality also he is certainly inferior to the first, and in some respects to the second. But none the less his treatises on jurisprudence occupy a high place, as they elaborate for the first time a systematic body of law, magnificent in its proportions, logically coherent, congruous, scientifically constructed, and based throughout on fundamental principles; although the adoption of these first principles is to be largely attributed to his study of, and attempt at reconciling, the doctrines of Hobbes and Grotius. He is at once the best representative and the head of the school of natural law. His works display a spirit of tolerance, an impatience with narrow sectarianism, a determination to separate law from theology, a desire to mete out justice to all mankind, whether Christian or heathen, whether high or low in the scale of civilisation.

It has been held that the doctrines of natural law have at times had a retarding influence on the development of international law. But this was not due to any defect inherent in the former, but rather to the analogical and syllogistic inconsequences of over-enthusiastic devotees of natural law, to the careless vagaries of special pleaders advocating or opposing this or that particular provision or institution. The law of the present world—whether municipal or international—no doubt possesses above all a positive character. Modern science is largely materialistic, and its professors vauntingly proclaim it so. The modern age is inordinately given to glorifying the visible, the tangible. But there are signs of a spiritual awakening; there is now manifested in many quarters a desire to go beyond the veil of phenomena, and to search for the ultimate principles of life, of thought, of human relationships. Science is now becoming strikingly transcendentalised; the study of comparative jurisprudence, so extensively grown of late, shows that men have become keenly anxious to learn not only how legal problems have been or are being solved in different places, but also how law has originated, and what are its essential foundations universally recognised as such. As in science metaphysical entities are being more and more imported, so in the sphere of law will those principles of natural law come to be more and more emphasised, through the ineradicable promptings of the intuitive consciousness of men and of States. Does not the recent Hague Convention—considered by many the very incarnation of the positive method in international law—speak of conscience and humanity? And does it not thereby affirm the inadequacy of that positive method, and make a covert appeal to natural law, which is in its simplest form an expression of what is introspectively discerned in human conscience? There are conceptions which retain a perennial potency in spite of their being openly disavowed at one time or another.

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[1] *Op. cit.* p. 25.

[2] W. Roscher, *Geschichte der National-Oekonomik in Deutschland* (München, 1874), p. 305: "Aber zwischen diesen Alternativen bleibt noch eine dritte Möglichkeit übrig: Pufendorff war ein, durch Philosophie, Jurisprudenz und Geschichte gründlichst vorgebildeter, Staatsgelehrter und National-ökonom von ausserordentlicher Bedeutung."

RECENT MONUMENT LEGISLATION AND THE CARE OF ARTISTIC TREASURES.

[*Contributed by* PROF. G. BALDWIN BROWN.]

WHEN Lord Lansdowne sold his Rembrandt for a hundred thousand pounds, and more recently when those fine examples of English fifteenth-century carving, the Tattershall mantelpieces, were barbarously hewn from their setting and carted to the south, correspondents in *The Times* called for legislative action to protect the artistic treasures of the country. The two cases are however very different. The Rembrandt, though Britons generally were proud of it as one of the possessions of the land, was only a happy accident. It was not of British origin, nor was it connected in any official way with the national life. It had been bought by a private individual, who made therein a particularly good bargain, and for a later owner to sell it was, at any rate, not an act of family or local impiety. The Tattershall fireplaces were, on the other hand, characteristic examples of a special phase of the national art. They were British in their origin, their style, and their associations, and the fact that heraldry played a large part in their ornamentation gave them a local significance. The Rembrandt, like any other modern cabinet picture, would be in place anywhere. It is a wholly independent product. The fireplaces were an integral part of a historic structure, and had no place or significance save where they were actually located, and the mutilation of the monument was an act of impiety which it is unjust to a historic people to call Vandalism.

It is obvious that the claims of the country in the latter case are much stronger than in the former. Legislation to prevent alienation of pictures by foreign masters that happen to be in private collections in this country would have to be very carefully considered, though to give the country a right of pre-emption is another matter. These pictures have been the subjects of contracts of sale for centuries past, and a section of the community is professionally occupied in the lucrative capacity of intermediary. Many collectors unite the propensities of the dealer to those of the virtuoso; and even apart from this there are *bonâ fide* collectors who throw themselves with enthusiasm for a time into the acquisition of a particular class of objects, and then turn their energies into some other direction, sell off what they have acquired, and begin anew. Others, who have purchased wisely but at considerable cost, find that the time comes when they must of necessity sacrifice their treasures to financial exigencies. In all these cases to attempt to fix for ever a *status quo*, and to put an end at a stroke to all the operations of which Messrs. Christie's sale-room is the recognised centre, is not to be thought of. Furthermore, to stop all sales would not benefit the public, for so long as a work of art remains in this country it matters little to the public in whose possession it may abide. On the other hand, it matters a good deal to the public when the sale is made to the foreigner; but if we wish to stop such sales we are met by the fact that the foreigner, especially from across the Atlantic, is prepared to pay very high prices, and owners who wish, or are forced, to turn their possessions into money would justly complain if they were excluded from the best markets. It is in fact obvious that the law can hardly step in and prohibit the exportation of an object in private hands merely on the ground that it is of high artistic value and that we would like to keep it in the country. The only practicable means for securing this last result would be to purchase the work for a public collection at home, and it is a perfectly feasible piece of legislation to give the Government in such a case the right of pre-emption. This right exists, or is now being demanded, in more than one continental country, and the arrangements for its working will be noticed later on in this article.

There are other considerations however, besides the absolute intrinsic value of an object, that might afford a reasonable basis for preventive legislation. Hitherto the case has been considered of an object of art which has no historical connection with the country, but owes its place in it to an accident. Moveable and eminently saleable objects exist however in private or corporate ownership, which are so closely connected with the history or life of the community that to break the connection seems an act of impiety. In the retention in their place and surroundings of works of this kind the country has a very real interest, and the public conscience is shocked when they are the victims of any glaring act of violence or even disrespect. The recent proposed sale of relics of John Bunyan by a corporate body in his own Bedford is a case in point. Let us imagine for the sake of argument the impossible case of a project of alienation by the corporation of the Foundling Hospital of Hogarth's noble portrait of its founder, or of the "March to Finchley," a masterpiece of the same artist who is somewhat intimately associated with the initiation of the charity. What a public outcry would arise! It may, in fact, be laid down as a working principle that anything which really shocks the conscience of the public will sooner or later form the subject of legislation, and there is no question that some legal methods will be devised or discussed among us for the prevention in such cases of mutilation or export from the country.

In view of this prospect it will be of interest to inquire what is accomplished or proposed in this same matter on the Continent, where legislation for the care of monuments, or as the Germans call it "Denkmalpflege," is far more advanced than among ourselves.

A historical review of the subject up to 1905 was presented in a work published in that year by the Cambridge University Press under the title *The Care of Ancient Monuments*; and this gives an account of the various measures in sufficient detail for the proper understanding of the particular provisions about the export of moveables and about objects in private ownership. The briefest summary of these earlier regulations is all that there is space for here. The measures passed or proposed within the last five years will be treated later on with some fullness.

There is, first of all, the case of historic lands where the soil enshrines remains of the ancient civilisations of which they were the seats. Many of these lands are under more or less despotic rule, a fact which makes distinctive regulations more feasible than in lands constitutionally more advanced. In such regions, when there is no formal Monument Act applying to the case, it is usual for the Government to claim by edict proprietorship over all objects of antiquity that may come to light accidentally or in excavations, as well as over all standing monuments already in evidence. Exportation of such objects without the leave of the authorities is forbidden under penalties. This is the case in Bosnia, Egypt, India, Tunis, Turkey. Other and more advanced countries, rich not only in antiquarian treasures but in those of later date, administer this part of the national wealth under similar Royal or Imperial Rescripts, which provide, *inter alia*, that objects of value shall not be exported out of the kingdom without permission. Such countries are Denmark, Finland, Hungary, Russia, Spain, Sweden. In the case of some other countries there are formal Monument Acts of comparatively modern date. Those in Bulgaria, Roumania, and Greece give the Government an absolute or modified lien on objects intended for export. By the legislation of Canton Vaud and some other Swiss cantons, prohibition of export is only contemplated in the case of objects in a particular schedule, on which items can only be placed with the consent of their owners. Hesse-Darmstadt has no prohibition in her Act of 1902 which would prevent private owners from sending abroad their moveable possessions.

Some of the most important European countries have not been mentioned in the above brief summary. Of these, Italy, France, Austria, Holland, and some others have made contributions to the legislation on this subject since 1905, and their enactments or proposals will be noticed in the succeeding part of this article. In the case of remaining countries, Prussia, Great Britain, and the United States have no law or regulation bearing on this particular subject of the freedom of sale of works of art, while in Belgium and Portugal there appears to be some uncertainty as to what is allowed or prohibited.

Passing now to more recent days we may note that the greatest activity in monument legislation during the last few years has been directed towards the protection of the natural beauties of a country rather than of its works of art. Hesse-Darmstadt perhaps led the way by introducing provisions of this sort into her epoch-making Monument Act of 1902. Bavaria followed in 1904, while in 1907 an important Act was passed in Prussia "against the deformation of inhabited places and regions distinguished for natural beauty." Since then in all parts of Germany laws have been passed in the same sense, in Saxony in Coburg in Bremen during 1909, in Oldenburg in 1910, while Austria and Bohemia have similar legislation in preparation, and various German towns have promulgated local ordinances to the same effect under shadow of the Prussian Act. The French law on the subject was passed on April 21, 1906, and already in 1910 there were under its provisions preserved from the danger of injury eighty-one natural monuments, comprising lakes, islands, ravines, caves, waterfalls, and rocks; parks, gardens, groves, and single trees; earthworks, Roman camps, and picturesque ruins.

Of actual Monument Acts of the older kind dealing with the works of human hands, that have been passed since 1905, the most important is that of Italy, which became law on June 20, 1909. In the new kingdom of Norway an Act obtained force on January 1, 1907, and one was passed applying to Iceland on November 16, 1907, while a few months ago the Grand Duchy of Oldenburg was supplied with an Act of similar kind. In the United States there was passed on June 8, 1906, "An Act for the Preservation of American Antiquities"; and this authorises the President "in his discretion to declare by public proclamation historic landmarks, historic and pre-historic structures, and other objects of historic or scientific interest to be national monuments." This only applies however to structures or objects that are on government land, and does not therefore carry protection very far. There should not be passed over the drastic "Antiquities Ordinance," promulgated for the Sudan in 1905, and entitled "An Ordinance for making provision for the Better Preservation of Antiquities in the Sudan." This may go down to our credit with Lord Curzon's excellent Monument Act for India of 1904.

Of equal importance with the Acts are the drafts and projects which have been prepared for submission to the Parliaments of different countries. In the work already referred to (*The Care of Ancient Monuments*) it is remarked that "a measure of the kind when first introduced is generally both logically arranged and clearly expressed, but it finally emerges from the Parliamentary battle-field in a somewhat ragged and disjointed condition." Hence the recent projects for monument legislation, which have been carefully prepared in Austria, France, Holland, and the city of Lübeck, are of special value for the object in view. These proposals are not crude motions by the private member, but have been prepared by commissions of experts and adopted as Government measures; so that they represent the mature experience of those best qualified to judge what practical safeguards would be at once effective for their purpose and not too alarming to the legislator or to the millionaire.

In analysing these proposals the special object in view will be the provisions for the protection of moveable works of art that are in danger of being lost to a country through sale to the foreigner. As is well known, the monument legislation of Italy exercises in this respect more constraint upon the individual owner of artistic treasures than that of any other important country. We must remember however, as Lord Curzon has pointed out, that this limitation of the rights of property concerns not merely artistic treasures of great intrinsic value like Rembrandt's "Mill," but treasures that are for the most part the productions of Italian artists of old, the glory of their country, and are intimately bound up with the history of its culture. To keep these in the country is accordingly an act of piety, and springs from no mere instinct of hoarding. It does not follow that the Italian prescriptions could suitably be transferred to these realms, where the works of art which there is a temptation to alienate are in most cases mere accidental possessions.

The distinction here noticed between intrinsic value and the value derived from association is one of much importance. The stocks outside the village church and the board for local-administration notices upon its door are not of so much value in themselves as the embroidered Spanish altar-front recently presented by a travelled parishioner, yet through their connection with the older social history of the land they are equally worthy of being entered on a schedule of protected monuments. When the object is something like the Bewcastle Cross, a monument of local origin and history, and at the same time a superb work of art, it possesses every sort of claim to national care and protection. The distinction indeed underlies a good deal of monument legislation. The most general definition of a monument as an object of artistic *or historical* interest belonging to older days assumes it, and though in some Acts, such as the Italian and the French, protection is declared on the general grounds of an object's artistic or historical importance, the Norse Act protects all things that have an interest *for the past of the land*, and at Lübeck a monument is "every moveable or immoveable object the preservation of which is of public utility in relation to the history, and especially the artistic history," of the city.

The expression just used, "moveable or immoveable object is very common in Monument Acts, but there is a tendency now to make the division a threefold one, and to distinguish moveable objects that have a local place and significance from those that are accidental sojourners in our midst. The recent Icelandic law makes a threefold division; fixed monuments (Fortidslevninger), moveable monuments (løse Fortidslevninger), and objects of antiquity (Oldsager); and the older French law expressed the same idea in another way when it spoke of monuments immoveable by nature or by prescription, meaning by the first buildings that cannot (or could not till modern engineering days) be shifted, and those, such as the stone altar in a church, that are meant to be fixtures, but in a material sense could be removed. This is not a mere verbal matter, but has a practical bearing. Monument legislation is in the hands not of the expert but of the ordinary member of Parliament and hereditary lawmaker, who have to be persuaded by the expert to pass the measures that are required. Such persons have a deeply ingrained respect for the rights of private property, and even our purely permissive Monument Act of 1882 was resisted to the last by the late Lord Salisbury and others as an "invasion of the rights of property." The Duke of Rutland has recently in *The Times* struck the same note. Now experience shows that alarm on this ground is least likely to be aroused in the case of the immoveable monument, especially when it is simple and pre-historic like a dolmen. Our Act of 1882, though not limited to such monuments, was popularly supposed to be framed (by Sir John Lubbock) in their interest, and on the schedule first affixed to the Act almost all the items mentioned came from the pre-historic class. Mediæval buildings are now treated freely under the Act; but they are all permanent structures, edifices, monumental crosses, cromlechs, and the like; and even in Ireland, where the list is a satisfactorily long one, there is practically nothing on it in the nature of a moveable. This favoured position occupied by the permanent structure is no doubt due to the public sense that it at least must be a part of the older history of the land. Accordingly, the new Bohemian project of legislation proposes to protect natural sites and immoveable monuments but not moveable objects. This being the case, it is a matter of importance to secure for the moveable monument a share in that prescriptive protection which public opinion has been trained to recognise as the due of the stone circle or mediæval keep. The Austrian expert, Freiherr v. Helfert, made an ingenious move in this direction by introducing a provision into his recent project that all the surroundings and belongings of a protected monument should be included without any special enumeration of them in the privileges applying to the monument as a whole; and he explained that these belongings (Zubehör) include not only what is fastened to it in the form of fixtures, but "everything also that serves for the regular use of the monument (such as the altar hangings and sacramental vessels of a church) or for its permanent decoration (such as pictures and works of sculpture) or again stands in a traditional connection with it." Such a provision might serve a very useful purpose in securing in an unobtrusive but effective manner the safety of smaller objects which it would be a trouble to enumerate. Among ourselves the preservation of moveable objects of church furniture has a certain importance. The State has of course no jurisdiction over them. It is commonly said that the church and its belongings are the freehold of the incumbent. He cannot however exercise the rights of a freeholder in respect of alterations and alienations, for which a faculty must be obtained. The granting of a faculty of the kind depends upon various considerations, and the interests of monuments are not always conserved. In the days of the High Church movement valuable Romanesque church plate is said to have been sometimes alienated, and its place taken by new chalices and pattens of the prevailing Gothic fashion. The Society of Antiquaries has more than once intervened to save some ecclesiastical treasure which was going to be sold under a faculty granted by a tribunal whose judgment on artistic matters was not infallible. Moveable objects of this kind need Government protection, whether this be exercised directly or by the device of considering them integral parts of a monument that is protected as a whole.

This is a matter which at this juncture specially concerns our neighbours across the Channel, who since the separation of Church and State by the law of December 11, 1905, and especially through the refusal of the Church to form the projected "associations cultuelles," have been much exercised about the thousands of beautiful objects of church furniture belonging to the ecclesiastical buildings of France. In 1910 it was reported in the preamble of the new Act (*Rapport sur le Budget*, *Service des Beaux-Arts*, p. 842) that the security of these objects had been greatly compromised, attempts by individuals to appropriate them had increased, and there had been irregular proceedings and even offences against the law. As a consequence the Administration des Beaux-Arts charged a special Commission with the preparation of a new Monument Act, one of the intentions of which was to strengthen the arm of the law for the protection of the moveable treasures thus endangered. This Act is now before the Chamber, but is not yet law.

For the present purpose it will be sufficient to consider some of the proposals in this Act that relate to moveable objects, and to take these in connection with parallel measures proposed or passed in Austria, Holland, and Italy. The Monument Act for Prussia, which has been in an advanced state of preparation for many years past, has not yet seen the light, and it is said that the difficulties in its way are partly connected with the Church and partly with private ownership. The Acts which have been recently passed in Norway and Iceland are not so useful for the present purpose. They are more drastic than any law should be that can hope to pass a Legislature like ours, even under the new Parliament Act; and their chief interest lies in their regulations about excavations and "finds." This is a matter which has considerable importance for our own country, but it lies rather outside the scope of the present article.

The French, as is well known, operate on the basis of an official schedule on which all protected objects are enrolled. So soon as an item has been placed on the list, or, as the French term it, has been "classé," it enjoys all the advantages of the law, while with everything not on the list the law has no concern. "Classification" is of course something different from inventorisation; the former is an official act carrying legal consequences, the latter is designed merely with a view to information, though legislation may ultimately be based upon it. The objections to the system of "classement," which are obvious, were put recently with force in the official commentary on the new Austrian project of law: "Inventories are necessary aids in the work of monument preservation, but they should not exercise any such legal power as attaches (under the French system) to the act of classification. Our (the Austrian) project gives effect to the view that when monuments are placed under two distinct categories, those that are 'classed' are taken too absolutely out of the control of their owners, while those that remain 'unclassed' are handed over defenceless to accident and caprice." As a fact, though the importance of a complete inventory of these national treasures is everywhere recognised, "classement" is not made the basis of all the recent Acts or projects noticed in this article, and in Austria and Germany the feeling is rather against it. This has, of course, a bearing on the situation in our own country. The inventorisation now in progress cannot possibly be finished for many years to come, and it is well to know that many continental authorities hold that protection can be effectively exercised without waiting for any complete list of monuments.

The new French project does not differ in any marked respect from the existing law of 1887. The difficulty always is to get a monument or an object of artistic or historical value on to the schedule; and this is far greater in the case of an item in private possession than in that of one belonging to a public or semi-public body. The law of 1887 allowed the Government to propose to "class" any immoveable monument in private hands the safety of which was threatened, and, if the owner did not agree to the proposal, to proceed to oust him from his property by the legal process of expropriation. This was rather oppressive on the individual and costly for the State, though it must be noted that the Administration des Beaux-Arts disposes of considerable funds that are available in the case of sudden demands of the kind. By the new project of law there is offered an alternative to the drastic process of compulsory purchase, for in default of the consent of the owner the decree of "classement" can be pronounced over his head, so to say, by the Council of State; and he may be accorded an indemnity as compensation for any loss he may be supposed to have suffered through the enforcement of the decree. The legal effect of the clause is to establish over the monument a perpetual servitude, though without withdrawing it from the possession of its owner. The arrangement is a new one, and of course has not yet passed the Legislature.

In regard to moveable objects in the possession of private bodies or individuals, nothing was said in 1887 about their classification; but a special Act of July 19, 1909, made the classification of them possible, though only with consent of the owner. The project now before the Chamber does not go further than this. A proprietor may consent to have his moveable possession classed, and in so doing he binds himself not to alter it in any way, nor to part with it without proper notice; to hold it open to periodical inspection, and not to convey it out of the country; while *per contra* he has a claim to the aid of the State when any expenditure on it is necessary, and the responsibility for its proper care is largely taken off his shoulders. If, however, the individual refuse to have his moveable treasure "classed," there is no provision in the project for any compulsion upon him. It should be said, however, that in the *Rapport* above referred to, p. 372, M. Paul Boncourt in discussing the project hazarded the opinion that this part of the Act might emerge from the discussions in the Chamber strengthened by the introduction here also of the servitude entailed by official classification over the head of the owner.

The Austrian project of law is the result of often renewed efforts to secure a legislative basis for the practical operations carried on by the long-established "Central-Commission zur Erforschung und Erhaltung der Kunst- und historischen Denkmale." In 1894 the Government, after consulting all parties interested, tried, but without effect, to frame a satisfactory Act; and more recently Freiherr von Helfert, who presided for some time over the Central-Commission and who had made many efforts to secure legislation, just before his death, in March 1910, brought in a bill in the Reichsrat. This draft, together with another prepared by some other authorities on the subject, was referred to a special Commission of twenty-one members of the Herrenhaus; and, as a result, a third draft, uniting the two, was evolved by a sub-committee of seven members, and accepted by the twenty-one in February 1911. It was to be brought before the Herrenhaus at the first opportunity. The text has been published with an instructive commentary by Count Latour, a member of the Commission.

The important section for our present purpose is that concerning monuments in the hands of private persons. On this Count Latour remarks that the Commission has only attempted to a very limited extent to curtail private rights. "Apart from the fact," he says, "that far-reaching provisions of the kind would not accord with the public opinion of the Empire, the experiments which have been tried in other lands with severely prohibitive regulations concerning private property do not encourage us to enter upon the same course. Immoveable objects in such ownership are as a rule only placed under the protection of the law when the proprietor himself takes the initiative; for moveable objects in general the only safeguard is the practical care that can be exercised by the administrative officials of the Department of Monuments." In the words of the draft Act, § 23, these officials are to "keep the objects in question as far as possible in the public eye, and as occasion arises to take advantage of any effective legal means for maintaining them in their integrity and preserving them within the national territory."

This same § 23 goes on however in the following somewhat remarkable nd unexpected fashion : "There remains especially in force the duty of iotification when there is any intention of sending an object out of the ountry, in accordance with the Rescript of the Imperial Chancellery of pril 3, 1827." This Rescript is to the effect that the Emperor, by a letter ddressed to Prince Metternich, had modified a previous decree forbidding he export of works of art of special value, and now decreed that from ebruary 18, 1827, every one who desired to export a work of art of the kind as bound to give notice to the authorities in order that the State might xercise if desired its right of pre-emption. How far this Rescript would o-day be sustained in the Austrian Courts it is hard to say, but it sounds ike a survival from a by-gone era of paternal government. A well-informed ustrian writer, Dr. Max Bauer, in commenting on the draft, does not uestion the validity of the Rescript in question.

Another provision aims at securing for the moveable object in private ossession a partial protection by modifying on certain conditions the death uties to which the object would be subjected when it passed by inheritance. imilar advantages are contemplated for the immoveable monument in rivate hands, such as a remission of house-duty on an undertaking that the tructure should not be disturbed for fifty years. It remains still to be seen hether suggestions of this kind will result in definite legislation when the ill passes through Parliament.

The Dutch project of last year is not of such an official character, as it was rawn up by a Commission appointed, not by Government, but by the private ociety of the Antiquaries of Holland (Nederlandsche Oudheidkundige Bond). t is printed with a commentary in the Society's *Bulletin*, Derde Jaargang o. 1, March 1910. In the draft, *immoveable* monuments, that must be t least fifty years old, are to be officially scheduled by a standing Commission n monuments, and the enrolment on the list is in each case to be notified to he proprietor, who may appeal against the inclusion to the Minister of the nterior. It is a weak point in the draft that no information is given as to the rinciples on which this appeal is to be decided, and too much seems to be ut upon the individual Minister. If the enrolment hold good, the owner of e scheduled monument, be it public body or private individual, must keep it p, and in this the State will share, and in many cases support entirely, the xpense. Moveable fittings, when they obviously belong to a monument, are egarded as part of it, and need not be separately entered. It is worth noting at a difference is made between public bodies and private owners, in that rotection is exercised by the State over all monuments of importance for istory or art in the hands of public bodies, but when it is a case of private wnership then the State only interferes to protect objects of *special* importance. oveables of artistic value that belong to public bodies can be scheduled in e same way as immoveables, but it is significant that the project contains no rovisions relating to moveable works of art in private collections.

A project of law that has been discussed for some three years in the small but very historic city-state of Lübeck is more drastic in its dealings with the private owner than any Act or draft hitherto noticed. Every sale of a moveable artistic monument must be notified in writing, and it is forbidden without the leave of the authorities to take one outside the limits of the city's territory. It is graciously added that this leave will be given in cases such as that of a possession passing by inheritance from one member of a Lübeck family to another who lives outside the limits. It should be said that a strong feeling exists in the community that these proposals are unduly restrictive.

The recent legislation of Italy has been left to the last, as it has a more direct bearing on the special subject of this article than any other project or Act now before the public. It must be premised that we are dealing here with an actually ratified law, and not a mere draft that has not passed through the fire of parliamentary criticism. The Act in question, which bears date June 20, 1909, supersedes that of June 12, 1902, and also various more recent Rescripts, and the text of it was published (without commentary) in the *Bollettino d'Arte del Ministero della Pubblica Istruzione*, Anno III, 1909, p. 274. The "Regolamento," or directions for carrying out the Act, which will be an important and lengthy document, has not yet come to hand.

Earlier Italian legislation on this subject is noticed in *The Care of Ancient Monuments*, and it is there shown how for centuries past the various Governments in the peninsula have controlled in a severe manner the export of the national treasures of art, so that by the Doria-Pamphilj Edict of 1802 infringement of prohibitions might be punished by five years at the galleys! While the present law has been under consideration, a short Act, of June 27, 1903, which has been several times renewed, has been in force, prohibiting the exportation of all works "di sommo pregio per la storia e per l'arte," of which a provisional list was immediately drawn up. The present law abrogates this temporary measure, and legislates on the following lines:

Objects immoveable or moveable of interest for history, archæology, palæontology or art, when belonging to public bodies, are inalienable, but may pass by sale from one such body to another by leave of the Minister of Public Instruction.

When such objects belong to private owners, and the owners have been notified by the authorities of the great importance of the objects, no sale or alienation is permitted without notification to the Minister. If a contract of sale have been drawn up, the Government has the right to purchase the object at the price agreed in the contract, any sale privately effected in contravention of these provisions being *ipso facto* null and void. Art. 8 runs as follows: "It is forbidden to export from the kingdom objects the interest of which for history, archæology, or art is of such a kind that their exportation would institute a serious loss (un danno grave) for history, archæology, or art." The possessor of a work of art of any kind who wishes to export it must give notice at the exportation office, "Ufficio di esportazione," where it will be decided whether it is of a character to bring it under the above category. If the decision be that it has *not* this exceptional value, the Government may if it choose, within a space of two months that may be extended to four, purchase the work at the price demanded by the exporter. If, on the other hand, it be declared of a kind that cannot be exported, the Government may offer to purchase it, but if no agreement to this effect can be reached, the object is returned to the owner, but with the continued servitude that it must be kept within the kingdom and maintained in a proper condition. With regard to the latter stipulation it is provided elsewhere, in Art. 7, that if a monument in private hands be suffering damage, and the proprietor will not take the measures of preservation, the Government can expropriate. The other provisions of the Act, which runs to forty-two articles, do not concern the special point at issue, but it should be noted that the Act confirms an arrangement made by a brief measure passed on July 14, 1907, according to which a sum of five million lire was placed to the credit of the Minister of Public Instruction "to provide for the eventual acquisition of objects immoveable and moveable that possess an important interest for history, archæology, or art."

It may be asked in conclusion, What are the practical hints for future British legislation which may be gained from recent continental experience? The protection of natural beauties and the control of excavations and "finds" are beyond the present scope, though in both cases restrictive measures may in this country soon be demanded. In the matters with which this article has been concerned, it has been made clear that the permanent monument is more easily protected than the moveable object, and the same is the case with possessions of the State or a public body more or less under State control as compared with those of the private proprietor. This we have seen emphasised by the facts that the Bohemian project only contemplates natural and immoveable monuments and leaves the portable ones severely alone, while the United States Act of 1906 only deals with permanent monuments on State land, and makes no attack on the more difficult problems connected with corporate or private ownership.

To legislate in favour of monuments under public control is on the Continent quite a normal procedure and excites little or no wrath. Such legislation might have its advantage in this country. Departments of Government, such as the War Office, the Post Office, and the Board of Education, have a good deal to do with natural sites and ancient monuments, and owing to want of knowledge or of forethought rather than to any vandalistic predilections they sometimes do them a good deal of harm. A Government measure calling the attention of the various boards and officials concerned to the necessity for care in regard to this part of the national inheritance would be most salutary. In regard to public bodies of the nature of town or parish councils we are not in so favourable a position as they are on the Continent, for in a matter of the kind these bodies are much less under Government control. In France the State can "class," and so protect, monuments belonging to departments and communes by administrative decree, but the British town council acts in such a matter with a freedom tempered only by the local press and public opinion, and, owing to the predilection of its average member for what is new and clean and straight, it has often proved itself terribly destructive. The proper safeguard of our older urban buildings is in fact one of the chief problems of British monument administration.

With respect to these, and to buildings and their adjuncts in private hands whether corporate or personal, the following measures or others on similar lines might prove both practicable and efficacious. Let the Inspector of Ancient Monuments (who is in touch with the Office of Works and the Government) and the Chairmen of the three Monument Commissions for England, Scotland, and Wales have the power of intervening at any moment to declare a threatened edifice or other immoveable a monument of special interest in relation to the past history and the art of the country. This should secure a delay of, say, three months, during which no measures (except in the interests of safety) should be taken to affect the condition or surroundings of the object. During that time the Office of Works would proceed by way of friendly negotiation, and if needful contribute a subsidy in the interests of preservation, but if these measures failed the authorities should be armed with the power, in the last resort, of expropriation. This power can in France and other continental countries be exercised on æsthetic grounds; with us at present only utilitarian grounds are recognised. With the monument as a whole should be included all its natural belongings, adjuncts, and surroundings.

In the matter of moveable objects, a distinction might be drawn between those that are characteristically British or have a special local or historical value, such as the Hogarths at the Foundling, and those others that are accidental possessions. In the case of the former, it might be in the power of the officials just named, with, say, the heads of some of the most important galleries and museums in the country, to declare at any time an object to possess a special claim to protection. This declaration should act automatically (1) in stopping for a space, say of three months, any projected operations connected with the object, and (2) in putting for the future on the owner the obligation of immediately notifying any contract of sale affecting the object into which he may at any time enter, and of admitting the Government's right of pre-emption at the contract price, which right may be exercised at any time within three months from the above notification. Any sale effected in contravention of these provisions to entail suitable penalties. At the same time an inventory of objects of this kind might be prepared, and owners informed of the inclusion of their possession in the list, the power of intervention in the case of any object not in the list being still retained.

In the case of the other objects the only interest of which is intrinsic, legislation is probably impracticable, and the reliance of the country should be placed on the good feeling and public spirit of proprietors to secure in all cases a chance for the nation of pre-emption at the contracted price. It should, however, be an understanding that the chance thus given be a *bonâ fide* one, some reasonable delay being allowed in each case for consideration and for the collection of the sum required. Though the Government follow the example of Italy, France, and other countries, and place a fairly substantial credit at the disposal of the monument administrators, yet reliance must chiefly be placed on the never-failing generosity of the cultivated and wealthy members of the community. For after all, disquisitions on monument legislation generally end, like the present one, in a reassertion of the fundamental position that it is to public opinion rather than to laws that we must look for the most efficient aid in this matter. " Les lois," wrote recently a French publicist, " si bonnes soient-elles, ne donnent en pareille matière que des moyens d'action très restreints. C'est le goût et la conscience du public qu'il faudrait lentement réformer."

INTERNATIONAL LAW AND SUBJECT RACES.[1]

[*Contributed by* Sir John Macdonell, C.B.]

I promised, somewhat rashly, your Secretary to contribute to the proceedings of the Congress a paper on International Arbitration, a subject the importance and opportuneness of which no one in these days questions. On reflection, however, it appeared to me—and I think that your Secretary admitted—that while of interest for all who sympathise with the objects of the Congress, arbitration had only indirect bearings upon much of its primary work. Great though the achievements of Arbitration have already been, great though its future is likely to be, one must not be blind to its limitations. It is an instrument for settling disputes between Governments; in particular, disputes likely to give rise to difficulties between States which diplomacy fails to settle. No doubt some of these questions are at bottom racial; such, for example, are the recurring difficulties as to emigration between China and Japan on the one hand and Great Britain and her Colonies and the United States on the other hand. These difficulties take an economic form; they originate in racial antagonism and prejudice. And even when no racial element is obviously and indisputably present, the real though latent difficulty in the way of a settlement of disputes may be the repugnance or distrust arising from race prejudice and misunderstanding.

International Arbitration does not touch, nor is it proposed that it should touch, many internal and domestic questions profoundly interesting to races which are not dominant. I take almost at random racial questions which happen to be of late uppermost: the condition of the Jews in Russia and Poland; the Poles under Russian rule; the Roumanians in Hungary; the Finns in Russia; the Macedonians and Armenians in Turkey; the East Indians in South Africa; the natives of the Congo State under Belgian rule. International Arbitration does not help to solve, except very remotely and indirectly, the problems which these names recall. To-day each State says, and will long continue to say, "I must be master in my own house." That position must be accepted—at all events for the time. We must look elsewhere for a solution (so far as possible) of some of the great problems due to differences and collisions of races.

But—and it is the chief object of my inquiry—it may be of interest to endeavour to examine whether the ends which the originators of the Congress had in view cannot be furthered by other means than arbitration; and, in particular, by a clearer recognition of duties to subject races than now exists; by better organisation of existing agencies, and by the creation of new organisations. I am sensible of the difficulty of making useful suggestions as to questions so many, so varied in character, and, it may be said, with so little in common. Not even a Leibnitz or a Humboldt or other great organisers of science could survey the whole of the vast field and map it out with full knowledge. My suggestions are offered only as hints which may elicit discussion and help clarify ideas. A further prefatory admission is needed. Great are the limitations of all machinery and organisations in accomplishing the chief aims in view. The walls of racial prejudice will not yield to mere organisation; the spread of knowledge, the spirit of charity, and new ideals are the only solvents.

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[1] A paper contributed to the First Universal Races Congress.

At the outset is the question: How far, if at all, is International Law applicable to the relations between subject and dominant, between civilised and uncivilised races? According to one view, they are not in any way applicable; according to another, they are so, but only partially, and with many qualifications. I pass over as not meriting notice in this Congress the contention which is rarely nowadays made in so many words, that a high degree of civilisation carries with it a right to impose the will of the superior upon the inferior; that as between them might is right and that the former may do exactly as they think fit in virtue of their superiority.[1]

Turning to statements less uncompromising, I proceed to cite those of one or two writers. The first is by Mr. John Stuart Mill:

> There is a great difference (for example) between the case in which the nations concerned are of the same, or something like the same, degree of civilisation, and that in which one of the parties to the situation is of a high, and the other of very low, grade of social improvement. To suppose that the same international customs, and the same rules of international morality, can obtain between one civilised nation and another, and between civilised nations and barbarians, is a grave error, and one which no statesman can fall into, however it may be with those who, from a safe and unresponsible position, criticise statesmen. Among many reasons why the same rules cannot be applicable to situations so different, the following are among the most important. In the first place the rules of ordinary international morality imply reciprocity. But barbarians will not reciprocate. They cannot be depended on for observing any rules. Their minds are not capable of so great an effort, nor their wills sufficiently under the influence of distant motives. In the next place nations which are still barbarous have not got beyond the period during which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners. Independence and nationality, so essential to the due growth and development of a people further advanced in improvement, are generally impediments to them. . . . A violation of great principles of morality it may easily be;

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[1] Trione (*Gli Stati Civili Nei loro Rapporti Giuridici coi Popoli Barbari*, p. 14) refers to Ize, who cites Hegel and Cousin as holding this opinion. In Ihering's *Geist des römischen Rechts*, vol. i. S. i, are some remarkable assertions of the right of powerful civilised nations to force their commerce upon Eastern nations.

> but barbarians have no rights as a nation, except a right to such treatment as may, at the earliest possible period, fit them for becoming one. The only moral laws for the relation between a civilised and a barbarous Government are the universal rules of morality between man and man (*Dissertations*, iii. p. 167).

I have quoted this passage as expressing the views of those—and they are many—who lay stress on the absence of reciprocity and the benefits of civilisation as justifying the application of different rules from those which are in force between civilised States. Bluntschli lays stress on the second of the above grounds:

> Lorsque la contrée qui ne fait partie du territoire d'aucun état est possédée par des tribus barbares, ces dernières ne peuvent pas être expulsées par les colons des nations civilisées; on les laissera émigrer en paix et leur fournira un dédommagement équitable. L'Etat colonisateur a le droit d'étendre sa souveraineté sur le territoire occupé par des peuplades sauvages pour favoriser la civilisation et l'extension des cultures (p. 280).

Here is another way of putting the same doctrine:

> C'est le droit naturel, non le droit international, qui est applicable aux rapports des nations civilisées avec les nations de l'Asie. . . . En Asie le droit international se transforme en droit naturel, lequel exige également que la parole donnée soit exécutée consciencieusement, que la vie et la propriété d'autrui soient reconnues saintes et inviolables, que les mauvais instincts et passions cèdent leur place aux impulsions justes, honnêtes et généreuses (Martens, "La Russie et l'Angleterre dans l'Asie Centrale," *Revue de Droit International*, 1879, p. 241).

This is the way in which the problem presents itself to some other modern writers:

> Der Unterschied in der Kultur berechtigt den Europäischen Staat nicht, im Verkehr mit einem minderkultivierten Volke, z. B., Papua, alle Regeln des Völkerrechts ausser Acht zu lassen. Es ist vielmehr davon auszugehen, dass jeder Staat die Grundrechte eines jeden andern—wenn auch von wenig gebildeten Menschen geleiteten—Staates so lange durchaus respektirt, als es die Ausübung der eigenen Grundrechte irgend gestattet (Gareis, p. 40).
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> Europeans States will be obliged, partly by their sense of honour, partly by their sense of their interest, to be guided by their own artificial rules in dealing with semi-civilised States when the latter have learned enough to make the demand, long before a reciprocal obedience to those rules can be reasonably expected (Hall, 6th ed. pp. 40, 41).

These statements are, for several reasons, not satisfactory; if not inaccurate, they lack precision and definiteness. In the first place, the modern practice of nations and the teaching of modern writers do not, on the whole, whatever may be done on particular occasions, accord with some of these opinions. Modern text-books treat, sometimes at great length, the relations and duties of civilised States to inferior or backward races. In point of fact there has always been some recognition of duties by civilised nations to uncivilised or semi-civilised nations with which the latter have been brought into contact: recognition generally imperfect; often compatible with gross cruelty; often serving as a cover or excuse for wrong-doing. One of the chief subjects of discussion among the earliest students of International Law (*e.g.* Francisco Victoria and Baldasarre de Ayala) was the relations and duties of the Spanish and Portuguese conquerors to the indigenous inhabitants.

Further it is to be noted that there is not a clear line of separation between civilised and barbarous nations; they often differ from each other by small degrees; the sharp distinction drawn in the passage which I have quoted from Mill between civilised nations and barbarous, does not help one in solving the actual problems, which for the most part relate to the dealings of nations with different types of civilisations, the relative value of which in the eyes of impartial observers, if such existed, might be dubious. What is the test of superiority? There is the often suggested test of proficiency in war, according to which the Turks some centuries ago were probably supreme among all nations, the Italians, contemporaries of Michael Angelo and Leonardo da Vinci, not excepted. There is the test of wealth; a test the justice of which, if applied to individuals, would be denied. There is the test of morality, the existence of a legal moral code and conformity of conduct thereto; a test the application of which, if possible, might lead to startling results. Nor is the distinction between the progressive and non-progressive races so clear to modern ethnologists as it was to those who knew little. The so-called stationary races are often merely those whose changes are unrecorded. As Professor Royce justly remarks, this test has never been so fairly applied by civilised nations as to give exact results. So long as there exists what M. Tarde calls the "irrésistible orgueil primitif que porte toute tribu, si infime qu'elle soit, à se considérer supérieure à ses voisins," the application of a well-accepted test is impossible. The superiority for which writers such as Gobineau and Houstin Chamberlain claim will never be conceded. But what is clear is that the world would be the poorer if one type of civilisation were to be universal[1]; what we cannot be sure of is, that an unpromising race, if left to itself, may not be the starting-point of a development which will enrich mankind.

I am only summarising the teaching of a great majority of writers when I say that, apart from the conventions which I am about to mention, some at least of the rules of International Law are assumed by almost all writers to apply to such communities; even as to communities outside the purview of International Law, there are duties to be performed, duties which may be stated and formulated. At all events this holds good of communities with regular Governments, though with social organisations and moral ideas unlike our own.

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[1] See the disheartening facts as to the benefits of civilisation collected by Bastian, *Der Mensch in der Geschichte*, vol. iii. p. 233, etc.

One of the most characteristic modern developments in the relations between States generally, between dominant and subject races, is the establishment of Protectorates by powerful States over the weaker, some of the latter being on a plane of civilisation equal to that of the former. Gradually are being evolved principles as to the reciprocal duties of protecting or protected States, including the treatment of the indigenous inhabitants.

A few words as to the conventions to which I have referred. There exists a group of treaties by which some of the chief States of the world bind themselves to perform certain duties towards the non-dominant races or parts of them. One universally recognised duty is that, chiefly in the interest of inferior or backward races, the slave trade, dependent necessarily upon supplies from such races, should be put down and should be treated as a heinous crime. I am not writing the history of the Slave Trade or the Emancipation Movement. I merely recall the pronouncement of the Allied Powers at Vienna in 1815, and at Verona in 1822, and the Quintuple Treaty of 1841. A landmark in the history of the subject is the Berlin Conference of 1884-5. It elucidated principles; it concentrated action; it was the beginning of a new policy as to the Slave Trade on land as well as sea. By Art. 6 of the Berlin Act the Powers agreed to watch over the preservation of the native tribes and to care for the improvement of their conditions, of their moral and material well-being, and to help in suppressing slavery and especially the Slave Trade. Art. 9 was as follows:

> Conformément aux principes du droit des gens, tels qu'ils sont reconnus par les puissances signataires, traite des esclaves étant interdite, et les opérations qui, sur terre ou sur mer, fournissent des esclaves à la traite devant être également considérées comme interdites, les puissances qui exercent, ou qui exerceront, souveraineté ou une influence dans les territoires formant le bassin conventionnel du Congo, déclarent que ces territoires ne pourront servir ni de marché ni de voie de transit pour la traite des esclaves, de quelque race que ce soit. Chacune de ces puissances s'engagent à employer tous les moyens en son pouvoir pour mettre fin à ce commerce et pour punir ceux qui s'en occupent.

Amongst the latest measures of consequence was the Brussels Anti-Slavery Act of July 20, 1890, which came into force on October 1, 1892. The Powers exercising sovereignty or a protectorate in Africa bound themselves (Art. 3) to pursue gradually, according as circumstances permit, "la répression de la traite, chacune dans ses possessions respectives et sous sa direction propre." By Art. 15 they further bound themselves to watch "les routes suivies sur leur territoire par les trafiquants des esclaves, d'y arrêter les convois en marche ou de les poursuivre partout où leur action pourrait s'exercer légalement." Posts were to be established (Art. 16) on such routes, with a view to intercept convoys and liberate the slaves. Chap. iii. deals with the repression of the traffic on the high seas. Another set of international regulations related to the sale of liquor (chap. vi.). The Brussels Act also contained restrictions on the importation of fire-arms.

Art. 8 stated that one of the conditions of the development of the slave trade was the free introduction of weapons, and accordingly it forbade their importation, except in certain circumstances, in a defined area. Arts. 90 and 91 of the General Act say:

> "Justement préoccupées des conséquences morales et matérielles qu'entraîne pour les populations indigènes l'abus de spiritueux, les Puissances signataires sont convenues d'appliquer les Arts. 91, 92, et 93, dans une zone délimitée par le 20ème degré latitude nord et parle 22ème degré latitude sud, et aboutissant vers l'ouest à l'océan Atlantique et vers l'est à l'océan Indien et à ses dépendances, y compris les îles adjacentes au littoral jusqu'à 100 milles marins de la côte."
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> "Dans les régions de cette zone où il sera constaté que, soit à raison des croyances religieuses, soit pour autres motifs, l'usage des boissons distillées n'existe pas ou ne s'est pas développé, les Puissances en prohiberont l'entrée. La fabrication des boissons distillées y sera également interdite."

Art. 92 binds the signatories to impose in possessions or protectorates not subject to prohibition an import duty of fifteen francs per hectolitre for the first three years and twenty-five francs afterwards. It was found that in the districts not subject to the prohibitive *régime* the importation of spirits was rapidly increasing, and accordingly the Powers agreed at a subsequent Conference held in Brussels in 1899 (Martens, *Recueil*, xxv. 543) to raise the import duty to seventy francs.

It is a matter of terminology, as to which I shall not presume to dogmatise, whether the agreements which I have mentioned form part of International Law or whether they are to be designated merely as indications of a common policy. I cannot say that those are unreasonable who hold that "l'Assemblée de Berlin a démontré qu'elle ne voyait point en eux des associations ou des individus en dehors de la communauté du droit des gens."[1]

It is at least plain from this brief recital of facts that there is some recognition of the duties of great States to weak and subject races; some recognition, too, of the need of joint action; some agreement as to these duties. It is no less true that these duties are still imperfectly recognised; that many points of importance are left unsettled; and that the organisation, official and non-official, needed to make them really effective is imperfect and rudimentary. The development of a code of duties of nations towards the less fortunate or less gifted, or more backward, races may require time; considering the slow rate at which the code of duties of civilised nations towards each other was worked out, it was possible that this new chapter may require much time. But some principles seem already fairly well recognised, and among them these—

1. If certain races are in the position of minors, not fit in their present condition to be their own masters, those who claim superiority and control ought to justify their position as guardians. The greater the unfitness of the former, the greater the duties imposed on the latter. Every Government

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[1] Engelhardt, quoted by Trione, p. 18.

asserting the right to control the destinies of such races ought to show by its conduct that it is not acting towards its wards as an unjust guardian; that it is not exploiting their labour or squandering their estates. Could we say that the Native departments of all Governments with an indigenous population under their control even now satisfied the test: "The measure of your duties is their alleged unfitness"? What is no less clear is that in many respects the so-called guardians are the least capable of judging fairly whether they have fulfilled such duties. No other judge may have jurisdiction; that circumstance does make them the less fallible.

2. There ought to be less of the intolerance of modern civilisation, equal to that of religious fanaticism; scarcely surpassed by any displayed by the Spanish conquerors of Mexico or Peru. If they were merciless, they had few means of carrying out their will, and they had at all events moments of contrition and doubts whether their work was altogether good in the eyes of Heaven, while the self-satisfaction of modern civilisation is rarely broken by an admission of failure. I am tempted to cite, if only as a rebuke to self-complacency which is too common on this point, a remarkable document entitled: "The true confession and protestation in the hour of death," by one of the first Spanish conquerors of Peru, named Marcio Serra de Lejesama, in 1589. Lejesama begins by declaring that he desires to relieve his mind and to give notice to his Catholic Majesty King Philip of his regret that he had taken part in the discovery and conquering of the lands of the Yncas.

> "The said Yncas," proceeds the repentant Conquisador, "governed in such a way, that in all the land neither a thief, nor a vicious man, nor a bad dishonest woman was known. The men all had honest and profitable employment. The woods and mines and all kinds of property were so divided that each man knew what belonged to him, and there were no law-suits. The Yncas were feared, obeyed, and respected by their subjects as a race very capable of governing. But we took away their land, and placed it under the government of Spain, and made them subjects. Your Majesty must understand that my reason for making this statement is to relieve my conscience, for we have destroyed this people by our bad examples. Crimes were once so little known among them that an Indian with one hundred thousand pieces of gold and silver in his house left it open, only placing a little stick across the door as a sign that the master was out, and nobody went in. But when they saw that we placed locks and keys on our doors, they understood that it was from fear of thieves, and when they saw that we had thieves amongst us, they despised us. All this I tell your Majesty to discharge my conscience of a weight that I may no longer be a party to these things. And I pray God to pardon me, for I am the last to die of all the discoverers and conquerors, and it is notorious that there are none left but me in this land or out of it, and therefore I now do what I can to relieve my conscience."[1]

I may not have searched diligently enough, but in the many narratives of modern explorations, conquerors and pioneers of civilisation, I can recall few expressions of regret so deep as that of the confession by the Spanish conqueror, few cases in which the conscience of a modern explorer or promoter smites him, and he is filled with doubts whether it was right to break up tribal organisations and convert into masses of shifting atoms what were once strong cohesive organisations, the rudiments of nations, if not nations full grown. Even when no cruelties have been practised towards native races, when on the contrary there has been a desire to deal fairly with them, the results have often been disastrous. The old tribal system is broken up, the best land is seized by settlers; the natives are stinted either in regard to pasturage or hunting grounds. They are lured away by the attraction of high wages, and they become broken tribeless men; imitating the worst vices of their new masters; cut off from their old nation; the authority of their chiefs gone, no authority replacing for these children of Nature that which has been destroyed.

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[1] Quoted in the Introduction to the Travels of Piedro de Ciez de Leon, Hakluyt Society, 1864, p. xxxii *n.*

Some of these evils are inevitable; it is the fashion to say or assume that all of them are so. Strange change of opinion, in old days it was supposed that the forces of Nature—the flood, the storm, the lightning, the elements, the difficulties of distance, were uncontrollable—all the very forces which modern science bends to its will. Alongside this modern confidence in the docility of physical forces, prevails a spirit bordering on fatalism in regard to the habits and conditions of men; a disbelief in the efficiency of laws or measures to avert or ameliorate a process of disintegration such as I have described; a conviction that man is not, as to his economical conditions, the master of his own fate or that of his kind. I am not going to turn aside to discuss all the questions here mooted; questions far beyond my powers. But I am justified in mentioning certain dominant prejudices, taking many forms, which have done mischief and are still at work, in dealing with the aborigines. One of these is an undue sense—undue in any large view of the matter—of the value of the present prevalent form of civilisation. It appears in the assumption that there is one form of society to which all others must conform on pain of perishing. This prejudice makes people forget how many different types of civilisation there have been—the Greek, the Roman, the Christian, the theocratic, the military, the industrial type—and that there has never been agreement as to their merits.

If the intolerance of civilisation, with its *compelle intrare*, has done harm, mischievous, too, has been the notion that the so-called uncivilised world is made up of races all of a piece; whereas under the vague description "uncivilised" are grouped a multitude of people radically different from each other; strong and weak, good and bad, progressive and stationary; some with the self-denying virtues in which are the roots of political aptitude; others unstable, egotistical, and incohesive. In the eighteenth century it was the fashion for a school of political writers here and in France to hold up the Otaheitans and South Sea Islanders as models to mankind; as the uncorrupted natural men whom Rousseau extolled; and to contrast them with the debased creation of civilisation with his luxury, his vices, his shame, and his crimes. Diderot and Voltaire delighted in placing the site of the Garden of Eden in a latitude and longitude not far from those of Otaheite, though by the way they perhaps glided lightly over the fact that some of these happy and virtuous people ate other happy and virtuous people. Read the accounts of the early navigators who visited these islands—Cook's and Wallis's, for example—and you see those so-called savages had virtues of their own, were courteous, gentle, and contented, and had, in the broad acceptation of the term, a civilisation of their own. Here are the words of an English traveller who lately visited an island in one of the great African lakes:

> Happy little island, and happy islanders! War never comes nigh them. They know nothing of the outside world. They seem to wish for nothing. Why should they? They have all they want. May it be centuries before civilisation with its innumerable attendant evils finds out and robs little Kisi of the peace and contentment it now enjoys! ("Circumnavigation of Lake Bangweolo," by Mr. Weatherley, *Geographical Journal*, 1898, p. 254). (For an account of a people with many of the best attributes of real civilisation, see Mr. Torday's recently published *Notes Ethnographiques sur les Bakuba et les Bushongo.*)

Let me quote the words in which William Penn—a sagacious and spacious-minded statesman who foresaw the difficulties which lay ahead—describes the Indians of Pennsylvania as he knew them.

> Don't abuse them, let them have justice, and you win them. The worst is they are the worse for the Christians, who have propagated their vices and yielded them traditions for ill, and not for good things. . . . In liberality they excel, nothing is too good for their friend; give them a fine gun, coat or other thing, it may pass twenty hands before it sticks; light of heart, strong affections, but soon spent; the most merry creatures, that live, feast, and dance perpetually; they never have much, nor want much; wealth circulates like the blood; all parts partake, and though none shall want what another has, yet exact observance of property ("A General Description of the Province of Pennsylvania," Penn's *Works*, p. 703).

3. I note a further point. That the conditions upon which treaties between civilised Governments, not uncivilised or semi-civilised communities, should be wholly different from treaties concluded between equals. I am quoting a rule of law, but one based on good sense, when I say that contracts to which minors are parties are voidable unless to their advantage. We all know how wantonly this has been disregarded; how the indigenous inhabitants have been tricked out of their lands; how a colour of legality has been given to gross frauds (Deherpe, *Essai sur le développement de l'occupation*, 1903, p. 76). I fully believe that such frauds are much rarer than they were—the opportunity for them now seldom occurs. But the principle above stated needs to be set down clearly.

4. It seems a truism to say that these races should retain their means of existence; a truism unfortunately often questioned in practice; a truism

with far-reaching consequences as to the land of tribes, as to the operations of promoters, and as to the granting of concessions. This principle implies a land system made for them as well as for the whites; where they preponderate in number, one may fairly claim made more for them than for the latter.

The Act of Berlin of February 26, 1885, laid down certain useful rules (Arts. 34 and 35) as to the assumption of a protectorate over territories on the coast of the African Continent and the conditions of occupation. These rules relate only to the rights of parties to the Act; they are silent as to the rights of the indigenous population in the land. It did not condemn the doctrine that such land if not occupied by a civilised state was *re nullius*, or prescribe the conditions upon which treaties relating to such land should be recognised.[1]

It might also be thought a truism, were it not so often disregarded, to say that the indigenous population should have the opportunities of development in their own way—which means education suited to their needs; no forcible conformity to one type.

5. The principle above stated implied something of reverence—at all events respect—towards these backward races; a desire to preserve their customs and law (so far as not cruel and mischievous).

So much—and it is necessarily imperfect—as to a few of the doctrines which have already obtained partial recognition, but which need explicit statement and application. Next, as to the organisation needed to give effect to them. In these days we at once think of Parliaments. But all the non-dominant races cannot have Parliaments. Yet they may have voices; not merely for the expression of political grievances, but for the maintenance and preservation of types of character and ideals; for the furtherance of national literature with racial elements; for the preservation of their institutions and monuments in art and literature; organs for the attainment of aims which the State does not necessarily secure and often destroys or imperils.

(*a*) First and foremost there should be fairly frequent meetings such as the present; gatherings from time to time when the whole situation may be reviewed, when people of different races may draw together, when the different forms which the same movement may take may be studied. If we must trust to public opinion, as is said, then public opinion should be enlightened by such gatherings as these. Sympathy ought to go hand in hand with knowledge, and it might be the object of such gatherings to study the scientific basis of truth, if any, underlying the theories as to race, and to discriminate between the mass of illusions and prejudices and scientific teaching. There should be more and more—and fortunately already there are many—societies representative of the interest of races. In no country, so far as I know, can Governments do all that is needed; in some they may be positively hostile to objects which certain races have much at heart. Some time ago a few of my friends formed the South African Native Races Committee. Its main object was to obtain and diffuse accurate information as to the native population of South Africa. Perhaps its chief work so far has been to bring about the formation of two similar societies in that country. Of late it has endeavoured to aid in procuring funds for the establishment of a college for South African natives. I cannot but think there is plenty of room for societies with like objects.

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[1] A proposal to that effect by Mr. Kasson, the representative of the United States, was put forward but rejected. The above is substantially in agreement with the proposal of Martitze, *Annuaire, Institut du Droit International*, ix. p. 280. "IX. Le droit international impose à la nation occupante le devoir de veiller à la conservation, à l'éducation, et à l'amélioration du bien-être moral et matériel des populations indigènes," etc.

(*b*) My last suggestion is difficult to state without saying too much or too little, without seeming to question or ignore the power of diplomacy and the press. Often of late it must have been borne in upon many that it was desirable to obtain accurate information as to some of the questions with which this Congress is concerned—information not only accurate, but universally accepted as such ; co-operation by inquirers whose competence or disinterestedness could not be questioned. Perhaps some day such investigators, forming a staff of trustworthy experts, will be available to throw light upon questions as to which official and non-official accounts differ.

To sum up these suggestions :—Closely connected with, if not a part of, International Law is a group of duties on the part of dominant races to those under their control or influence. These duties, now imperfectly recognised, may be made clearer ; they may be enlarged ; the observance of them may be made stricter by wise co-operation. Prizing and preserving diversity of race, we may attain to something like unity in spirit and policy.

[NOTE.—It is almost needless to say that the above statement does not profess to be a complete scientific account of a complex subject; it is a mere sketch, to be filled in by an examination of the many varieties of subject races.]

ENTITIES AND REAL AND ARTIFICIAL PERSONS.

[*Contributed by* W. E. SINGLETON, ESQ.]

THERE are signs of an approach of consciousness of the place of law among the sciences. Hitherto the lawyer has been apt to regard himself as concerned with an isolated set of phenomena, and as having nothing to learn from and nothing to teach the scientist. The lengthy period in which such conceptions held sway could not very well have been avoided. For while law has for practical purposes been studied from the beginning of human society, sociology, of which law is a branch, is the most recently constituted science. Scientific methods are now being adopted by the lawyer. The work of the Society of Comparative Legislation, for instance, is strictly analogous to that with which Darwin was occupied on the *Beagle.* From the London School of Economics and Political Science, too, are being turned out year after year those who are trained to correlate law with the other elements to be taken into account in social investigation.

Among the benefits that may be expected from a fusion of law with science is a further limitation of the domain of metaphysics. By metaphysics is here meant the practice of referring phenomena to creatures of the mind called entities. Reasoning depending on this plan will be called the metaphysical method. To say that gravity attracts an apple to the ground is to state in metaphysical language the fact than an apple falls to the ground. To say that as gravity is a being it must have a will would be to employ the metaphysical method. No great harm is done by attributing observed facts to an entity so long as we remember what we are about. It is often a great convenience. But when by the metaphysical method it is sought to prove the existence of facts which have not been observed, nothing but error can result.

The metaphysical method has proved useless to science. Progress in the scientific field has been won step by step by verification of every theory formed. Nothing has been gained by the spinning out of ontological theories incapable of verification, by what Plato calls being led about from ideas to ideas through ideas. "There is no short cut to truth, no way to gain a knowledge of the universe except through the gateway of scientific method" (Karl Pearson, *Grammar of Science*, 2nd ed. p. 17).

The sociologist therefore has warning in advance that he is unlikely to derive much help from metaphysics. He is on his guard against deducing from the manner of describing phenomena that are observed phenomena that are not observed. He may observe, for instance, that some groups of men working together for a common purpose for which they have set aside funds make use of a common name. It is usual to speak of the resulting phenomena in terms as if there were an organism, or a personality or an entity in addition to the human beings who compose the group. It is said that there is an entity with a name formed for a purpose and owning property. The phraseology is so convenient that the sociologist may make use of it to describe the observed facts. But he will not imagine that the language will enable him to dispense with further investigation, and he will not proceed to describe other phenomena from his notion of the nature of entities in general. He will not assert, for instance, that every entity must be connected with a special place in the same way as a human spirit is associated with a human body, and that therefore every society must have an office. That is the metaphysical method of reasoning. The sociologist ascertains the facts. He finds that in the case of some societies there is an office used for the common purpose, and in the case of other societies there is no office. He may report the result thus—some entities have offices, others have none; or thus—it is a characteristic of some entities to make use of offices, and of others not to make use of offices. But he will be particularly careful if he makes use of this way of speaking not to state as a fact what has not been observed.

Now if a scientific attitude of mind is to be preserved towards social phenomena, what is to be said of the theory of the reality of the personality of corporations which the late F. W. Maitland did so much to bring to the notice of English readers? In his celebrated introduction to Gierke's *Political Theories of the Middle Age*, Mr. Maitland thus generally describes the nature of the theory (p. xxvi):

> Our German Fellowship is no fiction, no symbol, no piece of the State's machinery, no collective name for individuals, but a living organism and a real person, with body and members and a will of its own. Itself can will, itself can act; it wills and acts by the men who are its organs as a man wills and acts by brain, mouth, and hand. . . .
>
> This theory, which we might call Realism. . . .

The logical basis of the theory is thus stated by Mr. W. Jethro Brown in the *Law Quarterly Review*, 1905, p. 368:

> Whenever men act in common they inevitably tend to develop a spirit which is something different from themselves taken singly or in sum. No one who has had any experience as a member of a governing body, for example, can be ignorant of the fact that the decisions of such a body, even when they are unanimous, are often inexplicable if regarded from the point of view of the several characters of the individual members considered as so many units.

That the decisions of a governing body of a trust foundation are generally different from those at which any member who had uncontrolled disposal of the trust fund would have arrived can easily be imagined. For the character of the founder will have obtained some expression in the trust deed or scheme, to say nothing of the views of the Charity Commissioners or other controlling authority. One can conceive, too, of a governing body being about equally divided in their partnership for A or B, as holder of an office within the gift of the body, and of C being unanimously appointed, not on account of superior qualifications, but because, having excited the hostility of neither party, his appointment causes least ill-feeling. And it is no doubt very convenient to ascribe what has been done to "it," the governing body and not to "us," the members. But it should be remembered that this is only a way of stating the facts. The notion of a "spirit" behind the members willing and acting explains nothing. When he comes to apply his general notions to the subject of the corporation Mr. Jethro Brown writes as follows:

> To the moderns it is becoming increasingly clear that "the something more than the sum of its members" which the State implicitly recognises as a person is no mere creation of the juristic imagination, but is rather a reality as indisputable as that very material subject of rights and duties the "natural person" (p. 370).

But these bold words are only required to dispel the view that a corporation owes its recognition as a person entirely to the State.

> When the personality is described as a fiction of the law, the novice might suppose that no more was meant than that the corporation was not a man. Were this the case there would be no need for controversy. What is meant, however, appears to be that the corporate personality has no existence beyond that which the State chooses to give it (p. 370).

Here then we discover the essential feature of the realistic theory, and having demolished this view to his satisfaction, Mr. Jethro Brown makes haste to abandon his aerial weapons and return gracefully to firm earth with a distinction between what is real and what is actual, and by declaring that personality is a "legal conception," though he previously told us that it is "no mere creature of the juristic imagination."

> The outcome of the preceding argument may be briefly expressed by saying hat the corporation is a person, and that this person is not a legal fiction. That it must be in consequence a real person seems to follow necessarily. Yet we must be careful to remember that in such a connection the term "real person" is not he same as actual person. Personality is a legal conception. . . . The whole conception of group personality belongs then to the world, not of material, but of psychical realities (p. 372).

Rightly viewed, the realistic theory is only a stage in an advance towards a more scientific conception. From a combination of notions partly legal, partly metaphysical, the realists are isolating for consideration an idea which is not the exclusive property of the lawyer.

Take for instance this from p. 1 of *Grant on Corporations*, 1850:

> A corporation aggregate is an abstract being or a metaphysical body, and something altogether distinct from the aggregate of the individual members, as much as they are from the rest of her Majesty's subjects.

How far is this law and how far metaphysics? How far a proposition to which legal effect must be given and how far an opinion personal to the writer as to the nature of things? The realists separate off the legal elements and insist on an examination of the idea of group personality apart from law. This clears the way for the application of the experience of the scientist who is able to demonstrate that the entity so detached exists in the mind only and should only be used to describe what is observed.

It will soon be recognised how fruitless is the attempt to make any other use of the entity. The arguments that can be founded on it will not bear examination. Thus in *The Osborne Judgment and After*, published by the Manchester Guardian, Limited, at 3*d*., Prof. W. M. Geldart at pp. 19-21 says that the trade union "real being" is more akin to that of the Scottish Free Church than that of the London County Council, and therefore there is something inappropriate in narrowly defining the purposes of a trade union. Of what value is such a distinction even if it can be traced? Parliament will not feel called on to legislate merely because Prof. Geldart so arranges his ideas as to see something inappropriate in the law as it stands, for there will be nothing inappropriate if he rearranges his ideas to correspond with the legal phenomena observed.

In *Personnalité Juridique* (Paris, 1910) M. Raymond Saleilles says if the personality of a foundation is something which the law does not create but only recognises, the suppression of a foundation can be undertaken less arbitrarily than if personality is a matter of legal concession (p. 629). As if the expediency of an alteration in the law with regard to religious foundations was to be prejudged by the language in which they are described, or as if metaphysical reasoning was a short cut to political wisdom.

"As to philosophy, that is no affair of mine," said Mr. Maitland at the conclusion of the Sidgewick Lecture for 1903, printed in No. 14 of the *Journal of the Society of Comparative Legislation*. But other students of the realism theory will not be content to leave it thus, and the clearer it is made that the idea of group personally exists in the mind independently of law, the sooner will the metaphysical method become discredited in this connection.

With regard to English corporation law it is sometimes supposed that the realism theory and the fiction theory are mutually exclusive. This is not so. It is possible to recognise the convenience apart from law of describing the phenomena of corporations in terms of entities from which the scientist deduces no consequences. It is possible at the same time to believe it to be part of the law of England that in the case of a corporation the existence of an artificial person is to be assumed and that legal consequences are to be deduced from this assumption.

The realism theory when fully understood would be of no service in the development of corporation law. The development of a corporation law by judicial decision already accomplished would have been impossible without the theory of a fictitious person from whose existence consequences are to be deduced.

Fictions are a source of obscurity, and in modern times corporation law owes much more to legislation than to judicial decision. It is interesting to notice how the fiction theory could be removed from English law. An Act might be passed stating in detail all the consequences that follow from incorporation and declaring that no further consequences are to be deduced. The fiction theory would then be obsolete. The realism theory, which does not depend on law, would remain to the extent to which it is convenient to describe corporate phenomena in terms of an entity.

The trade union decisions of the present century are often thought to have done something to establish the realism theory in opposition to the fiction theory. There is little justification for this opinion. Apart from the decisions a trade union is very much in the position of any other unincorporated association. Property appropriated for the purpose of the association is vested in trustees. The Trade Union Act, 1871, recognises this. It provides that certain purposes of a trade union shall not be criminal or unlawful. And if the option of registering a trade union is exercised other privileges are obtained. The Act refers to property belonging to a trade union instead of using the cumbersome expression property vested in the trustees or officers of the union on the trusts or for the purposes declared by the rules. In fact, the Act sometimes adopts the popular method of speaking of these societies in terms of an entity.

The judgment of the then Lord Chancellor in the case of *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants*, (1901) A.C. 426, is as follows:

> If the Legislature has created a thing which can own property, which can employ servants and which can inflict injury, it must be taken, I think, to have implicitly given the power to make it suable in a court of law for injuries purposely done by its authority and procurement.

What is the thing that is here spoken of? An entity existing in the mind independently of law or an artificial person whose existence we are legally bound to suppose? Plainly not the former, for consequences are deduced. We have here a new fictitious person which is not a corporation.

The introduction into our legal system of a new fiction, that is to say an obligation to assume and deduce consequences from an imaginary person different from that assumed for a corporation, is a step of profound importance.

Until the consequences are slowly elaborated by judicial decision trade union law must remain in a chaotic state. It is difficult to guess what characteristics of the corporation person are to attach to the trade union person; in other words, how much corporation law will be applied to trade unions or what modifications it will suffer in the process.

Take for instance the case of the *Amalgamated Society of Railway Servants* v. *Osborne*, (1910) A.C. 87. An ordinary unincorporated association can, if authorised to do so by its rules, extend its objects. It has now been declared that in the case of the new juristic person this privilege is very much curtailed. It is difficult to follow the reasoning by which this has been accomplished. At the back of it is the feeling that the trade union artificial person should have restricted powers in the same way as the corporation artificial person, though even a limited liability company has certain powers of altering its memorandum, and it is not contested that a trade union would be limited by the objects set forth in its rules until they are extended. The definition of a trade union in the 1876 Act would not, one would have thought, have prevented an unincorporated association from extending its objects. If a trade union is defined as a combination having characteristics A, B, and C, a combination possessing characteristics A, B, C, and D is not thereby prohibited nor does such a combination cease to be a trade union. Lord Shaw of Dunfermline, it is true, had doubts. "Statute did not set them up," he said, "and speaking for myself I have some hesitation in so construing language of statutory recognition as a definition imposing such hard-and-fast restrictive limits as would cramp the development and energies and destroy the natural movements of the living organisms."

If the Legislature intended to take the momentous step of setting up a new legal person from whose existence inferences are to be drawn, it might have been expected to do so somewhat more explicitly. But it is far easier to recognise a new juristic person than to attempt to explain the judgment of the Lord Chancellor quoted above in the light of the realistic theory. To do so is to make the judgment an example of the vices of the metaphysical method. Collect by observation a few phenomena, arrange them in the mind as attributes of an entity, and then announce another phenomenon, a knowledge of which has not been acquired by observation. The introduction of a new fiction may be deplored, but there is nothing in the recent trade union decisions compelling us to treat the fiction and realistic theories as competitors or showing a preference for the latter over the former.

A favourite subject for metaphysical discussion is the State. In *The Modern State*, for instance, Mr. P. C. Beaulieu gravely asks us to believe that because the State is destitute of the faculty of invention it is not the highest form of personality. As if the conception of the State were anything more than a device for describing briefly a multitude of facts, and as if any advantage could be gained by comparing these with the characteristics of a man.

The State has without introduction in the shape of definition made its appearance on the English Statute Book. S. 3 of the Land Registry (Middlesex Deeds) Act, 1891, is as follows:

> 3. (1) All land, registers, books, papers and effects held or used at the commencement of this Act for the purpose of the Middlesex Registry shall as from that date vest in her Majesty for the public service for all the estate and interest for which the same are then held or used, subject to the liabilities affecting the same.
>
> (2) All such lands shall be under the management of the Commissioners of Works. . . .

S. 23 (3) of the Land Transfer Act, 1897, which provides for the Yorkshire Deeds Registries, commences as follows:

> 23. (3) The whole of the property, assets, and liabilities of the County Council, in relation to the local registry, shall be included in the transfer, and shall be taken over by *the State* at a price to be specified. . . .

It will be seen that instead of using the cumbersome phrase "vest in Her Majesty for the public service," the draughtsman in the 1897 Act speaks in terms of the State.

If they are ever raised, however, the same kind of questions will require consideration as under the Trade Union Acts. It is possible to say that the Legislature has created a thing—the State. It can own property. It can take over liabilities. It can pay a price. Is the Legislature to be taken to have impliedly given the power to make the State suable in a court of law for injuries purposely done by its authority and procurement? Is the State to have limited powers like a corporation? The State was first mentioned in he 1897 Act, and this may therefore be called its "charter of incorporaion," an expression applied to the Trade Union Acts in Osborne's case. Are the powers of the State then to be limited to carrying on the Land Registry?

Three courses seem open:

1. Metaphysical exponents of the realism theory may be allowed to redicate anything of the State they care to evolve out of their inner onsciousnesses and legal effect may be given to these views by judicial ecision. It will be found, however, that the opinions will differ widely. Some will wish to extend the functions of the State, others to limit them.

2. The State may be recognised as a new artificial person whose existence ve are bound to assume and from which consequences are to be deduced. How far the characteristics of the State are to resemble those of the orporation or the trade union artificial persons must be uncertain and for a ong time this branch of the law must be in a state of chaos. Some of the haracteristics deduced by the judges by analogy with the corporation or the rade union or otherwise will be unwelcome to the legislature and the subject vill be further complicated by piecemeal legislation directed at particular ecisions,

3. Both the above courses may be rejected. On the one hand, the metaphysical method, long since given up by the scientist, may be discarded by the lawyer. On the other hand, something much more definite may be required from the Legislature before an obligation is felt to assume the existence of a new fictitious person and deduce from the assumption consequences of overwhelming importance. The State in the 1897 Act may be regarded merely as a means of saying (a little obscurely perhaps) very much the same thing as is said in the 1891 Act. No further consequences will be deduced from the language employed.

The experience that has been gained with trade union law would seem to show that the last is the preferable course.

PRIVILEGE IN DEFAMATION ACTIONS IN AUSTRALIA.

[*Contributed by* James Edward Hogg, Esq.]

The case of *Macintosh* v. *Dun*, [1908] A.C. 390, seems not to have found its way yet into the text-books on Libel and Slander. Being a decision of the Judicial Committee of the Privy Council only, it would of course be open to the English Courts to regard it as of no more than persuasive authority. This is not likely to happen, and *Macintosh* v. *Dun* may be taken to have established the proposition that privilege cannot be claimed for a defamatory communication when made as part of a system for supplying information to persons who require to be informed of the commercial position of those with whom they do business. The case arose in the Australian Courts, and the principles of law which were the subject of discussion in *Macintosh* v. *Dun* have already received further illustration in more recent Australian cases. The views of the Australian Courts did not meet with the approval of the Judicial Committee in *Macintosh* v. *Dun*, and the decision of the High Court of Australia (with which the Supreme Court of New South Wales was in accord) was reversed on an appeal being brought to London. In the more recent cases referred to the Australian Courts themselves are not in accord, the Supreme Court of Victoria having been overruled by the High Court of Australia. It is proposed to examine the views of the law relating to privileged communications taken by the two Courts respectively.

The two cases are *Peatling* v. *Watson*, [1909] V.L.R. 198, and *Howe* v. *Lees*, 11 Com. L.R. 361. The facts in both were very similar, and the case in the High Court of Australia—*Howe* v. *Lees*—was in effect an appeal from the decision of the Supreme Court of Victoria in *Peatling* v. *Watson*.

In *Macintosh* v. *Dun* the defamatory statements were made by a Trade Protection Society in answer to inquiries from one of the Society's subscribers with respect to the plaintiff. In *Peatling* v. *Watson* and *Howe* v. *Lees* the defamatory statements were made by the members and secretary of an association of cattle salesmen—the Associated Stock and Station Agents of Bendigo. This association consisted simply of a small number (under twenty) of persons at Bendigo who carried on business as cattle salesmen or "stock and station agents" at the municipal sheep and cattle yards. The association had regular rules, as to mode of payment by purchasers, etc., and under these rules each member was bound to report to the secretary each week the name of any person who was in default in settling for stock purchased. The names of these defaulters were printed in a "defaulters' list" and a copy supplied by the secretary to every member of the association. In each of the two cases referred to the plaintiff was a person who had purchased sheep or cattle from a member of the association and had had his name placed on the association's "black list."

In *Peatling* v. *Watson* (in the Victorian Court) the plaintiff was actually indebted to the defendants to the extent of six shillings, and his name was placed on the list by the secretary of the association in pursuance of the rules. The principal defence to the plaintiff's claim for damages for the libel was privilege. The Court, however, held that the defendants were not entitled to treat the occasion as privileged, and upheld the judgment which had at the trial been given for the plaintiff. The Chief Justice, after referring to cases where privilege may not have been claimed for defamatory statements made in the interests of society generally, said: "In the present case it is impossible to say that because a butcher is in arrears to the extent of six shillings in an account with people with whom he is dealing, that it in the least concerns society at all, so that it becomes the moral duty of the person to whom he owes the six shillings to tell eleven persons in the same business that the six shillings is due to him. On the face of it it is absurd." Hodges J. put it on the ground that there was neither any moral or social duty, nor any common interest, which would have justified the publication by the defendants of the fact that the plaintiff owed them six shillings. No reference was made to *Macintosh* v. *Dun.*

The other case—*Howe* v. *Lees*, in the High Court of Australia—also arose in Victoria in connection with the same association of salesmen. The Victorian Court followed its own decision in *Peatling* v. *Watson*, and the appeal in *Howe* v. *Lees* was virtually an appeal from the decision in *Peatling* v. *Watson*. In the result, the High Court reversed the Victorian Court's decision in *Howe* v. *Lees*, and thus in effect overruled *Peatling* v. *Watson* as having been wrongly decided. The only differences in the circumstances of the two cases were that in the later case the action was for slander and not libel, and that the slander was due to a mistake, the plaintiff in fact not being indebted at all to the defendants. Thus the case for the plaintiff (respondent) in *Howe* v. *Lees* was stronger than that of the plaintiff in *Peatling* v. *Watson*, for in the last-mentioned case the plaintiff did at least owe the trifling sum of six shillings, whereas in the case before the High Court of Australia the plaintiff actually owed nothing at all. Nevertheless the High Court of Australia held, though not unanimously, that the defamatory communication was privileged, and the plaintiff eventually failed in his action. Of the eight judges who composed the two Courts, four took the view that the communication was privileged, and four that it was not—there being three members of the Victorian Court, and five of the High Court of

Australia, one of whom dissented from the view taken by the majority of the Appeal Court.

As already stated, *Macintosh* v. *Dun* was not referred to in the Victorian Court. On the appeal to the High Court of Australia, however, the Privy Council's judgment was strongly pressed on the Court by the defendants (appellants), who urged that their case was in fact covered by the decision in *Macintosh* v. *Dun*. The High Court of Australia did not accede to this argument and held that *Macintosh* v. *Dun* was distinguishable. Isaacs J., the dissenting judge, thought the law as laid down in *Macintosh* v. *Dun* did cover the present case. It seems clear that if the decision of the High Court of Australia in *Howe* v. *Lees* ever does come to be reviewed by the Judicial Committee, or any similar case arises in the English Courts, the principal argument against the Australian decision will be that it really is in conflict with *Macintosh* v. *Dun*.

At p. 399 of the report of *Macintosh* v. *Dun* in [1908] A.C. 390, Lord Macnaghten says, in referring to *Toogood* v. *Spyring* (1 C.M. & R. 181): "The underlying principle is 'the common convenience and welfare of society'—not the convenience of individuals or the convenience of a class, but . . . 'the general interest of society.'" On this the observation of Iaaacs J. in his dissenting judgment is: "The mere observance of special rules of business, such as are found in the present case, absolutely laid down for themselves by a number of traders, whilst possibly advantageous to themselves, does not appeal to my mind as necessary for the convenience and welfare of society, but rather for the convenience of individuals or a self-constituted class, and therefore outside the fundamental principle of protection which alone displaces the *prima facie* right of a slandered man's redress." The *ratio decidendi* of the majority of the Court is that a wide meaning should be given to "duty" and "interest," whilst *Macintosh* v. *Dun* is regarded as decided upon the special fact that the Trade Protection Society "trade for profit in the characters of other people." But it is submitted that the dissenting judgment in *Howe* v. *Lees* pays the proper regard to the broad principle on which *Macintosh* v. *Dun* rests—that communications with respect to another person's credit or monetary dealings are not to be protected unless made in legitimate self-defence or from a *bona fide* sense of duty. The objects, in fact, of the "Associated Stock and Station Agents of Bendigo" were not so dissimilar from the objects of the Trade Protection Society in *Macintosh* v. *Dun* as to make that case very easily distinguishable from such cases as *Peatling* v. *Watson* and *Howe* v. *Lees*. It may be that if a case similar to these crops up in the English Courts the views of the Supreme Court of Victoria may be held to be more in accord with the principles of the law of privilege than those of the High Court of Australia.

THE NEW LAW OF COPYRIGHT IN RUSSIA.

[*Contributed by* L. P. RASTORGOUEFF, ESQ., *of the Russian Bar.*]

THE earliest legislation connected with copyright in Russia dates no further back than the beginning of the second quarter of the last century.

Before this time the very small number of readers satisfied their requirements with foreign books, and Russian original literature was so little developed that the question of the defence of authors' rights did not arise.

There were, however, special privileges connected with printing given by the Government to a few private persons and learned bodies, who received the exclusive right to publish certain books.

These privileges not only promoted the interests of printers, but created a convenient system of machinery by which censorship could be exercised over the books produced.

The gradual development of Russian literature brought with it the economic necessity for the legal protection of the rights of authors. In the eyes of the authorities literature was so closely bound up with the question of police supervision that the first law of the "rights of writers" was promulgated in 1828 as part of the Statute of Censorship. Here with the laws (in 1845) relating to musical, and (in 1846) to artistic property, it remained until 1887, when it was at last given a place in the Civil Code as an addition to Clause 2 of Art. 420 (which defines the right of property) under the heading of "Right of Property in Works of Science, Literature, and Art."

The law was so imperfect that the application of it to the increasing number of cases became more and more difficult. There was one famous case, for instance, in which two publishers brought actions, each against the other, both claiming the exclusive right to publish a certain work. The case lasted for five years, was considered three times by the Senate (in the capacity of Court of Cassation) and in the end it was decided in favour of both applicants, it being found that one had the right of property, and the other the right of publication in the same book!

The Government was conscious of the inadequacy of the law, and in 1897 it was ordered by Imperial Ukase that a project for a new law should be brought before the Council of State for consideration.

The Minister of Justice in his report which accompanied the new proposals described the existing condition of things in the following words: "The present law in force suffers from such essential defects that it is absolutely ecessary that it should be re-considered as quickly as possible. Every one ho has had to deal with it, theoretically or practically, has recognised its nsatisfactory character. To leave it in such a state any longer is to threaten e whole of our education and culture with serious danger."

Notwithstanding the urgency of this statement the new project was never onsidered at all until the constitution of the Duma, which in 1907 delivered to a Commission to be dealt with. In May 1909 it was passed by the uma, and after due consideration by the Council of State it received mperial confirmation on March 20 this year (1911) and became law.

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The new copyright law consists of seventy-five articles contained in seven hapters, of which the first deals with the general principles applying to each f the four kinds of copyright, namely literary, musical, artistic, and photo-raphic. The details peculiar to each are respectively dealt with in separate hapters. Of the remaining two chapters one deals with the public performnce of musical and dramatic works, and the other with publication greements.

Copyright is no longer construed as "property," and Art. 1 simply states at copyright subsists in literary, musical, artistic, and photographic works, numerating examples of such works in illustration of its meaning. So far approximates in general outline to the new English Copyright Act, although ere are certain differences in detail. The very significant word "original" hich in the English Act qualifies the works in which copyright subsists lause 1) is unfortunately absent in our Russian law.

In practice this omission may lead to the extension of copyright to all rain-work, even that which has no pretension to originality. This view was aken by judicial practice under the former law, and the Senate in the deciion of 1868, No. 478, laid it down that the degree of imagination or intellience displayed in the work of the claimant to copyright was not taken into ccount by the law.

The new law gives reasonable ground to our tribunals for an extensive nterpretation of copyright, not only by omitting the term "original," but also y enumerating among the works in which copyright subsists collections of olk-songs, traditional tunes, proverbs, fairy-tales, ancient designs and editions f old documents (Arts. 13, 38)—works obviously and by their nature not riginal, but upon which time, expense, and ingenuity only have been xpended.

An extensive application of copyright to architectural work, for instance, ould create great inconvenience and certainly lead to constant litigation, for ot only would protection from imitation be provided for works of genius and rtistic value, but also for the most commonplace and utilitarian structures the esigners and builders of which might set up frivolous and ridiculous claims to opyright.

Among the particular literary works enumerated as subjects of copyright are translations. In these, as also in collections of old folk-songs or ancient documents, the translator or collector, as the case may be, has copyright only as regards his own work, other persons being at liberty to make independent versions from the same original (Art. 36).

Speeches, lectures, sermons, etc., are the subjects of copyright in Russian law as they are in the English Act, but with this difference, that in Russian law speeches made before legislative bodies and tribunals and on other public occasions may be published verbatim in newspapers and periodicals as well as in the special reports of such meetings (Art. 38).

Special provisions are devoted to private letters and diaries which, not being intended for publication, are of an intimate character. Such letters and diaries may be published only with the consent of the authors, or, in the case of letters, of the recipients also; and after the death of either, by consent of their heirs-at-law, no special instructions being left by the deceased persons. After a term of fifty years after the death of the diarist, or the last of the correspondents, the consent of their surviving spouses and children only is required for the publication of diary or correspondence (Arts. 28, 29).

This provision protects not the material but the personal interests of the nearest relatives of an author, whose permission for the publication of his works must be obtained even although his property may have been bequeathed by him to another person. At the time it roused much lively discussion, both in society and in the legislative bodies in Russia, especially in the Council of State.

Literary circles in particular declared that such documents should be free from copyright in the interests of the public, and that the personal views of an author's own family should not be permitted to override the benefit of posterity, and deprive literature of valuable material.

In the Council of State it was warmly contended by Mr. A. F. Kony, on the other hand, that no publication whatever of private writings should be permitted without the direct consent of the author himself.

The form in which the Article finally appeared was more or less of a compromise between these two extreme views.

Government publications such as laws, decrees, resolutions passed by legislative assemblies, orders of municipalities, zemstvos, etc., and all materials on which such acts are based, are not subject to copyright, nor are the decisions made in courts of law; any one is at liberty to publish them (Art. 37).

Although cinematograph exhibitions are extremely common in Russia, it is a curious and unaccountable fact that there is no reference to them in the copyright law. Cinematograph films certainly are protected from reproduction as a kind of photographic work, but the scenes and combinations arranged for cinematograph shows, which are classed in the English Act (clause 35) among the dramatic performances, have no means of protection whatever in Russian law.

In the same way the omission of any provision for cinematograph reproduction affects authors of literary and dramatic works, for they receive no protection in Russia against the adaptation and performance of their works by means of cinematograph films.

Copyright subsists either in published (the Russian word for which means "appearing in public") or in unpublished work. It is enjoyed by Russian subjects, either as original authors or as their successors, whether the work was published or made in Russia or abroad.

As regards foreigners, they as original authors enjoy copyright in all unpublished works, whether made in Russia or abroad, and in published work if it is published in Russia. As successors to the original authors they may enjoy copyright in work by Russian subjects, whether made or published abroad or in Russia, and in works by foreigners if they are published in Russia (Art. 4). In unpublished work by foreigners they enjoy it unreservedly.

With regard to literary and musical work by foreigners published abroad, the law does not give them full copyright, but protects them by prohibiting the copying of the work in Russia without the consent of the persons who, in their own country, hold the copyright in it; only, however, for a period not exceeding the term of copyright in Russia (Arts. 32, 44).

Although in the Council of State the representative of the merchant class urged in the interests of the printing trade that the copying of foreign books should be free, his view was not shared by other members of the Council, and the prohibiting Article was approved and accepted by the majority of that body, as it had already been by the Duma. Their reason was that the free copying of foreign books, while having no great educational value for Russians, would serve to put money into the pockets of speculative publishers and deprive foreign authors of the just reward of their own work.

The question of the translation of foreign books has always provoked passionate discussion among Russian writers, legislators, teachers, and society generally. Russia is compelled, from the want of original literature, to borrow much scientific work from other countries, and nowhere is there a greater demand for translations. To supply it after negotiation with foreign authors and satisfaction of their claims in the matter of copyright would be difficult and costly, and would place such translations beyond the reach of the large class of poor students. In Art. 35 of the present law, therefore, the translation of foreign books published abroad by foreign authors is declared free, unless the contrary is established by agreements with foreign countries.

The meaning of copyright is defined in the Russian law as the exclusive right of the author to produce, publish, and distribute his work by every possible means (Art. 2).

This definition, however, is restricted in respect of artistic and photographic work. Arts. 55 and 59 prohibit only the production, reproduction, and publication of artistic work by means of *the same art*, and of photographic work by means of all kinds of photography.

Copyright includes the right to convert dramatic work into novels and *vice versa* (Art. 31), to translate work from the original into foreign languages (Art. 33), to perform dramatic or musical work in public (Art. 47), and in the case of musical work to make and publish selections, to transpose for voice or instrument, or for such records, perforated rolls, and other contrivances as may be necessary for performances by gramophones, phonographs, pianolas, and other similar instruments (Art. 42). It is not quite clear from the wording of this Article whether all mechanical instruments are meant, or only those which act by means of exchangeable contrivances, records, rolls, etc. ("plaques échangeables").

The following acts are not considered as infringements of copyright (Arts. 3, 27, 40, 43, 50, 54, 56, 72):

(*a*) the reproduction of a work for private use;

(*b*) the use of another's work for the composition of a fresh work which differs essentially from it—compilations, variations (in music), etc.;

(*c*) the publication of short passages from, or even the whole of short literary or musical works, or the reproduction of pictures, buildings, etc., from any sources for purposes of educational and scientific illustration;

(*d*) the copying in periodicals of news, information, etc., from other periodicals, as well as communications received by telegram or telephone. Articles may also be copied, provided there is no special prohibition by the author. News by telephone or telegraph cannot be copied by newspapers in the same locality if a note prohibiting such copying is appended, until after the expiration of eighteen hours from the time of the first publication;

(*e*) the recitation, lecturing, or reading in public from published literary work;

(*f*) the performance of musical work for the object of private entertainment or charity, or at times of popular fête;

(*g*) the copying of works of art placed in churches, imperial palaces, museums, etc.;

(*h*) the reproduction of works of art placed in streets, squares, and other public places by some other medium than that in which the originals are designed;

(*i*) the reproduction of sculptures by painting and *vice versa*;

(*j*) the exposing of works of art or photographic works in public exhibitions;

(*k*) the use of separate parts of a work of art, and the whole of a photographic work in a production of industry or craftsmanship.

In every reproduction of literary or artistic work the name of the author and the source from which it is reproduced must be acknowledged (Art. 19).

The copyright law of 1828 determined the term of copyright for twenty five years after the death of the author, but following on an application by the widow of Pushkin, the famous Russian poet, in 1857, the term was prolonged to fifty years. The reasons given for this prolongation in the official report accompanying Madame Pushkin's petition were that the reading public being limited, and the means of increasing the distribution of books imperfect, an author could not receive a sufficient remuneration for his labour during his lifetime, and that it would be only just to him to allow a fair period during which his heirs might benefit from his work. The Literary Society, in discussing the project of the present copyright law in which the same period was proposed, came to the conclusion that fifty years was too long. A special Commission was appointed by them to make a full inquiry, and it was pointed out in the report of this Commission that there were very few authors, not only in Russia, but also in Western Europe, whose works continue to interest the public for fifty years after publication even. For this period, during which interest might be sufficient to create a demand for cheap editions, the works would remain expensive; but when, after fifty years, cheap editions could at last be produced, the public would have ceased to demand them. With regard to the few authors whose work creates perennial enthusiasm it would be an injury to the public to deprive them of the possibility of becoming easily possessed of such works for so long a period. In such a case the personal interest of the author's family should give way to that of society.

In the Duma as well as in the Council of State the question was the subject of a long debate not unlike the debate on the same point in the English House of Commons; very much the same objections were answered by similar arguments. Those who urged for the shorter period of thirty years pointed out that a long period of copyright would have a deterrent effect upon enlightenment and education; the copyright works of even the most popular writers being unattainable except to the rich, and a limited number of copies only being published. As an instance of this it was mentioned that in 1877, forty years after the death of Pushkin, the composer Tchaikovsky stated that he had the greatest difficulty in finding a copy of Pushkin's poem of "Eugeny Oniegin," which he required for his opera. It is interesting to add as a sequel to this that ten years later, when the copyright of Pushkin's work expired, the Russian booksellers were literally besieged by an enthusiastic public anxious to possess themselves at last of a volume of their favourite poet, which until then had been beyond their reach. The works of another author, E. F. Odoievsky, published in 1844, are now out of print, and cannot be republished because some documents proving the rights of his heirs to the copyright are missing.

On the first reading the Duma accepted the term of thirty years after the death of the author, but on the third reading this was altered to fifty years, and so became law (Art. 11).

For photographic work, which occupies a place midway between art and industry, the period fixed for copyright is ten years after the appearance of the work. For collections of photographs having historical, scientific, or artistic interest this period is extended to twenty-five years, and for photographs which form part of a literary work to fifty years (Art. 61).

In the case of joint-authorship the term of fifty years is reckoned from the death of the last survivor (Art. 12).

The period of copyright in posthumous work is fifty years from the author's death (Art. 11)—a considerable difference from the English Act.

The term of copyright for work done anonymously or under a pseudonym is for fifty years after the publication of the work unless the author appears in his own name, in which case the copyright dates from his death as usual (Art. 17).

From the date of publication also is calculated copyright in collections such as folk-songs, designs, etc., editions of ancient MS., as well as in periodicals, almanacs, encyclopædias, etc.; the period in the case of the latter, however, is shortened to twenty-five years (Arts. 13, 14, 30).

The exclusive right of the author to translate his work into a foreign language is limited to ten years after publication.

The question of compulsory licence was raised in connection with the period of copyright, and this also received considerable discussion in the Russian legislature. On the first reading compulsory licence was accepted by the Duma, but on the third reading it was rejected, and the law as passed contains no such provision in respect of literary work. As regards musical work, compulsory licence to transpose his work for mechanical instruments may be obtained from the composer by decision of the Court if the composer himself or another person by his permission has already made such a transposition for sale. The right to obtain such permission can belong only to any person having a factory for the manufacture of mechanical instruments in Russia. The remuneration of the composer is defined by the Court at its discretion (Art. 42).

As a general rule no registration or other formalities are required to establish copyright, but there are some exceptions.

To preserve copyright in photographic work every copy of the impression must bear the name in full and domicile of the photographer, publisher, or firm, and the date of issue of the work (Art. 60).

To reserve to an author of literary work the exclusive right to translate his own work during a period of ten years; to a musical composer the exclusive right to perform his own work in public; to an architect or engineer the exclusive right to construct buildings or machines from his own designs or plans, every copy of such work must respectively contain a special note reserving such right (Arts. 33, 48, 57).

The author of a work, whether an individual or a corporation of persons, is the first owner of copyright in it. In the case of co-authorship, which in Russian law is construed in the same meaning as in the English Act in s. 3 of clause 16, the copyright in the joint work belongs to both or all the authors, and the law of co-ownership in property applies to their relation with each other (Art. 5).

A special Article (15) deals with co-authorship in work the different parts of which contain in themselves artistic, musical, or literary interest, such as books illustrated either by drawings or music. Each author reserves the copyright of his own contribution to the work, the copyright of the whole complete work belonging to all the contributors conjointly.

A musical composer is free to use the text of any published literary work for his musical composition, and to publish it, but not separately from the music (except on programmes). If, however, the text was written specially for a musical composition the consent of the author is necessary. Copyright in a musical composition with words written to the order of the composer belongs as a whole to the composer, but the author of the words may publish his text separately, if there is no agreement to the contrary (Arts. 45, 46).

Ownership in works which are the result of collaboration (almanacs, encyclopædias, etc.) belongs to the publisher, but each collaborator reserves copyright in his own contribution, and may publish it separately (Art. 14), no reservation as to time being mentioned.

In the Russian law there is no provision corresponding to (*b*), s. 1, clause 5 of the English Act, an author being left the owner of his own work, whether made for an employer or not.

Copyright in artistic work sold by the artist, or made by order, belongs to the artist, except in portraits and busts (Arts. 51, 52).

Copyright may be passed on by inheritance, by will, or by agreement (Arts. 6-9). Publication agreement has peculiar features which cannot be treated of in a short paper like the present.

Infringement of copyright incurs liability to pay damages, the amount of which is fixed at the discretion of the Court, and all the infringing copies, as well as the means by which they were produced, may either be taken by the owner of the copyright at a valuation or destroyed, with the exception, however, of artistic and architectural work (Arts. 21-6).

Wilful infringement of copyright is punishable by fine not exceeding £50, or by arrest and imprisonment according to the degree of culpability. Provision as to this does not form part of the Copyright Law, but is inserted in the Criminal Code.

THE INTESTATE SUCCESSION OF HUSBAND AND WIFE IN ROMAN-DUTCH LAW.

[*Contributed by* PROF. R. W. LEE.]

DID and does the Roman-Dutch Law admit a surviving spouse, husband or wife, to succeed to the whole or any part of the estate of a pre-deceasing spouse, wife or husband, who has died intestate? The question is one of some complexity, and has been the occasion of conflicting opinions. It lies, however, within a narrow compass. Stated in other words, the problem is to determine whether the Roman Law succession *unde vir et uxor* was received into the Roman-Dutch Law, and by such reception has become part of the Common Law of those British possessions in which the Roman-Dutch Law obtains.

The learned reader will scarcely need to be reminded of the process of development in the Roman Law which entirely changed the relations of husband and wife, personal as well as proprietary, and which has, of course, left its traces in the sphere of intestate succession. In the earliest period there is no right of succession between the spouses as such. The *manus* wife is *filiæ loco*, and succeeds along with her own children.[1] Her husband, if he survives her, takes nothing by succession, for she can leave nothing which does not belong to him already *jure peculii*. In the *non-manus* marriage the spouses acquire no reciprocal rights of succession by the civil law. It is only at the end of the Republic or the beginning of the Empire that the prætor introduces into his Edict the *bonorum possessio unde vir et uxor*,[2] by which a surviving spouse may obtain the deceased spouse's estate in default of cognates of the deceased within the sixth degree, with an extension to the seventh degree in favour of the issue of second cousins.[3] So the law stood unaltered at the date of the promulgation of Justinian's 118th and 127th Novels. From the Code of Theodosius it appears that for a short time the surviving spouse had even been preferred to some of the kindred of the deceased (within the above limits?). But the Emperors Theodosius and Valentinian did not allow this to stand. "Nunc vero parentibus exstantibus vel propinquis ab intestato conjuges venire prohibemus."[1] They enacted, therefore (A.D. 428): "Maritus et uxor ab intestato invicem sibi in solidum pro antiquo jure succedant quotiens deficit omnis parentum liberorum seu propinquorum legitima vel naturalis successio fisco excluso."[2] Since the limitation of cognatic succession to the sixth and seventh degrees is retained in the Digest and the Institutes, it may be supposed that this limitation was not removed by the enactment just cited.[3] The Digest further defines the conditions under which succession of the spouses was allowed: "The marriage must be lawful (*justum*), and still subsisting at the time of the intestate's death.[4] A divorce, though not in the form prescribed by the *lex Julia de adulteriis*, is still sufficient to destroy any claim under this head. And so is a divorce by a freedwoman married to her patron, though the divorce is by the *lex Julia de maritandis ordinibus* held invalid, so that she cannot marry again without his consent."[5]

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[1] Gai. 1. 116; 3. 3. Mos. et Rom. Leg. Collat. 16. 2. 3.

[2] Vering, *Geschichte und Institutionen des Röm. Priv. Rechtes* (ed. 3) § 244. Gewiss war diese bon. p. unde cognati schon zu Cicero zeiten vorhanden (Cic. pro Cluent. c. 15. 60), und wahrscheinlich entstand mit ihr gleichzeitig die bon. poss. die der Prätor, wenn keine verwandten bon. poss. nachsuchten, ex edicto unde vir et uxor dem überlebenden, nicht geschiedenen Ehegatten gewährte. Girard, *Man. élém. de droit rom.* p. 848 (ed. 5), thinks that this succession was unknown to Cicero, but known to Labeo. Cf. Demangeat, *Cours élémentaire de droit romain* t. ii. p. 93.

[3] Inst. 3. 5. 5; Dig. 38. 8. 1. 3; Inst. 3. 9. 4; Dig. 38. 11. 1.

The new scheme of intestate succession unfolded in Novels 118 and 127 strangely ignores the succession *unde vir et uxor*. The result is understood to be that the old prætorian canon of succession remained unimpaired, enabling the surviving spouse to take in default of the four statutory classes.[6] It would seem, however, that cognates were now admitted *in infinitum*, and not as under the Edict merely to the sixth and seventh degree.[7]

In addition to the normal succession of which we have spoken the law of the Novels admitted a wife who was *pauper et indotata* to a share in her deceased husband's estate. This was equally the case whether he died testate or intestate; and a similar claim was allowed if he repudiated her without just cause in his lifetime. A corresponding boon accorded to the husband was afterwards denied him.[1]

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[1] Cod. Theod. 5. 1. 9.

[2] Cod. 6. 18.

[3] The "interpretatio" of Cod. Theod. 5. 1. 9 appears to set no limitation to the succession of cognates. "Si propinqui omnino defuerint, tum sibi invicem maritus vel uxor succedant." But cognates beyond the seventh degree were probably ignored. *Breviarium Alaricianum* ed. Conrat, p. 395. In his septem gradibus omnia propinquitatis nomina continentur, ultra quos nec affinitas inveniri nee successio potest amplius prorogari (Interpret. ad Paul. Sent. 4. 10. 8).

[4] Windscheid, Pandekten § 570, note 4, asks, "Ist auch factischer bestand der Ehe (eheliches Zusammenleben) bis zum Tode erforderlich?" and decides in the negative.

[5] Roby, *Roman Private Law*, Vol. I. p. 264.

[6] Girard, p. 851; Puchta ed. Rudorff, vol. iii. (§ 320), p. 254; Vering, § 246, p. 526; Baron, Pandekten, § 407.

[7] Warnkoenig, Institut. Jur. Rom. Priv. § 509. "Vocantur autem ad intestatorum defunctorum hereditates omnes cognati etiam longissimi gradus." The limitation to the tenth degree made by Grotius (2. 30. 1) and many of his contemporaries rests upon a misapprehension of Inst. 3. 5. 5. Voet ad S. C. Tertullian. (lib. 38), § 22; Demangeat, t. ii. p. 56. See also Wesenbecius, Comment. in Pandectas ad Dig. 38. 11. 5. 1; Perezius ad Cod. 6. 15. 3; Van Leeuwen, Cens. For. 1. 3. 15. 9. and 10; Groenewegen, ad Inst. 3. 5. 5. Vinnius (ad Inst. 3. 5. 5. § 4), thinks that there was no limit *jure novissimo*, but that *moribus* the limit is the tenth degree.

Having premised so much with regard to the Roman Law, we proceed to inquire how far these rules or any of them formed part of the law of Holland. Some writers of consequence repudiate the succession *unde vir et uxor* altogether for the whole of the Netherlands. Grotius, whose authority in the Roman-Dutch Law is equal or superior to that of Coke in the Law of England, gives a decided opinion in this sense. "Although under the Roman Law spouses and some others who are not relations are admitted to the inheritance of the deceased in order to prevent an escheat, such rights of succession *ab intestato* have never been admitted in these countries."[2] Groenewegen van der Made, who annotated the *Inleiding* of Grotius, and who is best known by his work *De legibus abrogatis et inusitatis in Hollandia vicinisque regionibus*, writes to the same effect.[3] Van Leeuwen declares himself on the same side, and for the same reason. "The succession *unde vir et uxor* on account of the conjugal community of goods, which has taken its place, has according to modern usage passed into complete disuse."[4] Like Groenewegen, this author refers to a string of authorities who, with the exception of Grotius, scarcely justify so unqualified an opinion. To go into them would hardly be worth while. So far we may leave the matter at this, that according to three principal writers of the seventeenth century the succession of the spouses formed no part of the customary law of Holland. Professor Fockema-Andreæ lends the weight of his authority to the same conclusion.[5]

The solution of the question does not, however, depend solely upon the customary law. As is well known, the canons of intestate succession were determined, or at all events handled, by legislation dating from the last quarter of the sixteenth century. The Political Ordinance of 1580,[6] which adopted in the main the common law of South Holland and Zeeland, and is known therefore as the New Schependoms Recht, was intended to apply to the whole of the Province of Holland[7] indifferently. It was, however, unacceptable to the people of North Holland, whose scheme of intestate succession was derived from another source and rested upon other principles.

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[1] Nov. 53. 6 and 117. 5; Voet, *ubi sup.* § 24; Puchta ed. Rudorff, vol. iii. (§ 304), p. 196; Windscheid, § 574, note 3.

[2] De Groot, Inleiding tot de Hollandsche Rechtsgeleertheyt, 2. 30. 2. Schorer in his note ad loc. defends Grotius against the charge of bias in favour of the Fisc.

[3] Groenewegen, de legg. abr. ad Cod. 6. 18.

[4] Van Leeuwen, Cens. For. 1, 3. 15. 12.

[5] See his edition of Grotius, vol. ii. p. 147.

[6] *Groot Placaet Boek*, vol. i. col. 335 *et seq.*

[7] The *province* of Holland, which was, of course, only one of the seven United Provinces.

Discontented with the Political Ordinance, they clamoured for and obtained a statute law of their own. This was enacted by a Placaat of 1599,[1] and is known as the New Aasdoms Recht, after the name of the ancient law of succession of North Holland. Meanwhile the Political Ordinance of 1580 had been explained in certain respects by an Interpretation of 1594.[2]

To enter into the details of these contending systems is outside our scope.[3] The sole question is their effect on the law of succession between spouses. In fact, neither says a word about it. By accident or design it is omitted. In this perplexity we must ask whether any general clause in the principal above-named enactments is wide enough to include or exclude it expressly or by implication. Art. 14 of the Placaat provides as follows: "Finally, all other successions not disposed of above shall be disposed of according to the true written laws" (*nae de waerlijcke beschreven Rechten*). That the reference is to the Roman Law is not seriously questioned, and is placed beyond all doubt if, as seems likely, we should read for the word "*waerlijcke*" = true, the word "*waereldlijke*"[4] = worldly or secular, which would clearly point to the Civil as distinct from the Canon Law. As regards South Holland the language of the Political Ordinance is less helpful. Art. 19 is as follows:

> With respect to inheritances and successions the States have repealed and abolished, as they repeal and abolish by these presents all the Civil Law (*alle beschreven Rechten*), Customs and Usages in force in the aforesaid Territories and Countships of Holland and Friesland[5] up to the present day with regard to the successions *ab intestato* which come to any one in respect to allodial, moveable and immoveable property without any testamentary disposition or the execution of any last will. Ordaining and decreeing that from henceforth there shall be used and observed as a common law in the matter of the aforesaid successions, everywhere and in all places as well in the walled towns as in the villages and in the country districts in the said Province and Countships of Holland and Friesland what follows.

As said above, nothing follows on the subject of succession between the spouses.

In this state of facts it seems reasonable and even inevitable to infer that subsequently to the above enactments the succession *unde vir et uxor* formed part of the law of North Holland, but did not form part of the law of South Holland. Such, indeed, is the opinion of many of the best authorities, as Voet,[6]

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[1] *Groot Placaet Boek*, vol. i. col. 343.

[2] *Ibid.* col. 342.

[3] See Grotius, lib. 2, cap. 28, and Vinnius, ad Inst. lib. 3, tit. 5.

[4] All the commentators agree in doing so.

[5] *i.e.* West Friesland. It was incorporated with Holland in the thirteenth century.

[6] Ad S. C. Tertull. lib. 38, § 26.

Boel,[1] Schorer,[2] Blondeel,[3] Van der Keessel,[4] Van der Linden,[5] and lastly of Professor Fockema-Andreæ.[6]

Strangely, however, this conclusion is not universally accepted. There are those who refuse to admit this canon of succession even in North Holland. There may be others who would admit it in South Holland as well. It will be worth while briefly to examine the arguments which can be urged in support of one or other view.

The first of these contrary theses is maintained not only by Grotius,[7] Groenewegen,[7] Van Leeuwen,[7] and Van der Vorm,[8] but also by the vigorous advocacy of Bynkershoek.[9] This great jurist, whose opinions are never hesitating or half-hearted, calls to mind the language of another great lawyer, Sir George Jessel. "That is our law," he once said; "if, however, it were not our law, the absurdity would be apparent."[10] In much the same spirit the learned President states the proposition that this succession is unknown in Holland as a thing too certain for dispute. "Quis enim de ea successione unquam fando audivit vel litem motam vidit?" This initial dictum he follows up with a contemptuous citation of the authors above mentioned, together with a reference to a decision reported by Neostadius,[11] which, however, admits of an interpretation not favourable to his argument,[12] and besides has no bearing upon the law of North Holland.[13] Next, he throws scorn upon the notion that the Political Ordinance by Art. 19 excludes every other rule of succession than those contained in it. Its only effect, he says, is to abrogate successions which are contrary to its terms. Else, he argues, the succession of the Fisc, which is contended for in preference to that of the surviving spouse, would itself be excluded by parity of reasoning.[14] Further, if Art. 19 of the Political Ordinance excludes the succession *unde vir et uxor* in South Holland, Art. 14 of the Placaat must be supposed to admit it in North Holland; but this he will not allow—"sed verissimum est, eam in nulla Hollandiæ parte fuisse frequentatum vel adhuc frequentari." He concludes by scolding Groenewegen and Van

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[1] Boel ad Loenii Decisiones, Casus xviii. p. 678, where the whole question is very fully and ably handled.

[2] Ad Grot. 2. 30. 2. and 3.

[3] Van der Vorm, *Versterfrecht*, 7th ed. by V. J. Blondeel, at p. 199.

[4] Thesis 365, and Dictata ad loc.

[5] *Regtsgeleerd Handboek*, 1. 10. 3.

[6] Notes to Grotius, 2, 30. 2.

[7] *Vide supra.*

[8] *Versterfrecht*, § 63: "In gantsch Holland en West Friesland erven echtgenote van elkander *ab intestato* niet."

[9] *Quæst. Jur. Priv.* lib. 3, cap. 12.

[10] *Wallis* v. *Smith*, (1882) 21 Ch. D. at p. 257.

[11] Neostadius, *Utriusque Curiæ Decisiones*, Part 2, Decis. 7.

[12] See Boel ad Loen. p. 678; Van der Vorm, *Versterfrecht*, ed. Blondeel, p. 203.

[13] It relates to a case of succession which arose at Delft, where the Schependoms Law obtained.

[14] But the two things are not *in pari materia*, as Blondeel justly observes, *op. cit.* p. 199.

Leeuwen—and with reason—for saying that the succession *unde vir et uxor* is rendered unnecessary by the institution of community of goods. The chances are equal, he says, whether a spouse benefits by community or not; therefore, if the succession of the spouses was good for the Romans, there is no reason why it should not be good for Dutchmen also. The sum of the matter is that this succession is excluded from the law of Holland because it *is* excluded. "That is our law. If it were not our law the absurdity would be apparent."

To this tirade Mr. V. J. Blondeel, the scholarly editor of Van der Vorm's *Versterfrecht*, replies with a reasoned argument.[1] He controverts Bynkershoek's statement that the spouses do not succeed to one another in North Holland. As regards South Holland, however, he acquiesces in the view that this succession has no place.

The contrary proposition that the succession *unde vir et uxor* is part of the law of South Holland finds few supporters. To sustain this argument it must be shown not only that the Political Ordinance does not exclude it, but further that, apart from the Political Ordinance, it forms part of the common law. This raises the further question of the source from which *casus omissi* in the Political Ordinance are to be supplied. The answers are various and unsatisfactory. Some say "from the analogy of the Ordinance itself." This carries us no further.[2] Others invoke the pre-statutory Schependoms Law or customary law of Zeeland.[3] This is to interpret *obscurum per obscurius*. Others again turn to the Roman Law as to the general common law of the country.[4] "Qui jus Romanum allegat fundatam habet intentionem."[5] But this will not do either, for the Roman Law is not admitted where it is at variance with the analogy of our law[6]; and this it surely is in regard of successions *ab intestato*, which alike in North and in South Holland have from times of old depended upon tribal customs afterwards modified and defined by statutes. Upon the whole, then, the attempt to find a place for the succession *unde vir et uxor* in the law of South Holland must be abandoned as impracticable. So we come back to the proposition already advanced, that this mode of succession after 1599 formed part of the law of North Holland, but never formed part of the law of South Holland.

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[1] *Op. cit.* pp. 195-208.

[2] Grot. 2. 28. 27; Groenewegen apud Van der Vorm, Blondeel's ed. p. 147. The language used is very vague. Grotius says: "Nae de algemeene voorstellingen die by ons zijn verhaelt." Groenewegen refers to the "gemeene maximen" on which the Political Ordinance is founded.

[3] Grot. *loc. cit.*; Vander Vorm, ch. 6, § 8, p. 31.

[4] Blondeel inclines to this view (p. 40), and Van der Keessel in his Dictata ad Grot. 2. 28. 27 adopts it. He concurs, moreover, with Bynkershoek's interpretation of P.O. Art. 19.

[5] Van der Keessel, Thesis 22.

[6] *Ibid.* Thesis 19.

A very few words may be devoted to the *vidua pauper et indotata*. She will scarcely survive where the succession *unde vir et uxor* succumbs. Grotius passes her over in silence. Groenewegen abrogates her.[1] Voet does not pronounce in her favour.[2] Van Leeuwen is against her.[3] In Utrecht alone she finds a sympathiser.[4] We shall not hear of her again.

We must now carry the story a long way further, and follow its fortunes in the East and West Indies. In the Netherlands the endless controversies as to intestate succession had at all events in the last resort an appeal to local custom. But when a man died intestate upon the high seas or in some far-distant country such recourse was difficult or impossible. It became necessary therefore to invoke the very doubtful aid of the Legislature. In 1629 the States General issued an Order of Government for the places conquered and to be conquered in the West Indies.[5] This applied to such lands "the Political Ordinance of 1580, and further the common customs of South Holland and Zeeland, since the same are most known, can easily be applied, and will introduce the least obscurity and alteration." Thus the settlements in the West Indies were to be governed by the Schependoms Recht, the law of succession of South Holland.

In the year 1732—doubtless for the avoidance of obscurity—a new rule was enacted for the colony of Berbice. The charter[6] of December 6 of that year, after reciting the importance of providing for the intestate succession to colonists and others who shall have established themselves in the colony aforesaid, enacted that every person going thither shall be allowed to choose such known law of intestacy as shall please him,[7] but in default thereof the Charter given to the East India Company under date January 10, 1661, shall be followed. This charter, of which we shall hear again, is in its main features (with one important modification) Schependoms Law. Finally for Demerara and Essequibo, by resolution of October 4, 1774,[8] the States General enjoined the observance of the Aasdoms Law of North Holland as contained in the Placaat of 1599.

The three settlements of Demerara, Essequibo, and Berbice have from 1831 been combined in the colony of British Guiana. Since no statutory change has harmonised the law of intestate succession in the three counties, this colony to the present day retains within its limits the two principal schemes of intestate succession which obtained in the old motherland, viz.

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[1] Ad Cod. 6. 18.

[2] Ad S.C. Tertull. lib. 38, § 26.

[3] Cens. For. 1. 3. 15. 12.

[4] Joann. à Someren, *de Jure novercarum*, cap. 10.

[5] Ordre van Regieringe, Oct. 13, 1629, Art. 59, 2 G.P.B. 1235; Van der Vorm, ed. Blondeel, p. 634.

[6] Van der Vorm, ed. Blondeel, p. 637.

[7] This was a recognised practice known as "Verkiezing van land-recht." See Grot. lib. 2, cap. 29.

[8] The Laws of British Guiana (ed. 1905), vol. i. p. 1.

for Demerara and Essequibo the Aasdoms Law, for Berbice the Schependoms Law as modified by the Octrooi to the East India Company of 1661.[1] The particular matter of the succession of the spouses is, however, now dealt with by statute. By the Deceased Persons' Estates Ordinance (No. 9) of 1909, s. (1): "When any person dies intestate without leaving any child or descendant of any child him or her surviving who is entitled to inherit, the surviving husband or wife of such person shall be entitled to one half of the inheritance left by such person; provided that nothing in this section shall be construed to affect any antenuptial contract or marriage settlement or any property held under such contract or settlement." This clause, which took effect on April 3, 1909, superseded a similar provision in Ord. No. 9 of 1887 relating only to spouses married in community. By Ord. No. 12 of 1904, which came into operation on August 20 of that year,[2] community of goods is no longer a consequence of marriage. Presumably the above-cited enactment leaves unaffected the common law right of a surviving spouse to succeed in Demerara and Essequibo to the whole of the deceased spouse's estate in default of all relations by blood.

From West we travel East to find again legislation that darkens counsel. Its history appears to be as follows. In the year 1634 one Gregorius Cornely, domiciled at Middelburg in Zeeland, died in the Indies leaving two infant children, who also died. The States General directed that the succession should go according to the Political Ordinance and the laws of Zeeland.[3] It does not appear that this order was intended to lay down a general rule.

In 1642 Governor A. Van Diemen promulgated his collection of Statute Law known as the Old Statutes of Batavia.[4] It is expressed to be provisional in character[5] and to remain in force until the Council of Seventeen with the authority and approbation of the States General should otherwise determine. With regard to intestate succession in particular it provides that "the law of the towns of North Holland shall be followed as was ordained in the year '16 on directions from the Council of Seventeen."[6] The detailed rules which follow correspond in all particulars with the Placaat of 1599 and are, therefore, pure Aasdoms Law.

In 1661 the States General, moved thereto by representations from the company's officials, issued the well-known Octrooi or Charter of January 10.[1] Having considered the regulations of 1629 and 1636 issued for the West Indies, which introduced the Political Ordinance into those regions, they resolved "after ripe deliberation, that the same law together with the Interpretation of 1594 should apply to all Lands, Towns, and Peoples in India obedient to the State of the United Netherlands and under the direction of the East India Company," and also in respect of succession to persons dying on the outward or homeward voyage. The Octrooi does not contain the terms of the Political Ordinance, but incorporates them by reference, subject to an important deviation in the sense of the Aasdoms Law in favour of a sole surviving parent, who by the Political Ordinance is not admitted to the inheritance of a deceased child. This interpolated section corresponds closely but not exactly with Art. 3 of the Placaat of 1599, and lends some colour to the statement that the Octrooi is based upon the law neither of North Holland nor of South Holland, but is partly derived from both. The statement, however, is misleading, for, except for the above-mentioned modification, it corresponds in every particular with the law of South Holland.

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[1] In the case of *Ex p. Administrator-General, re Estate Alexander*, (1890) 1 Law Rep. of Brit. Gui. N.S. p. 6, the Court considered the law of intestacy of Berbice. All the above-mentioned enactments were cited, and the decision was in accordance with them. Nevertheless the learned editor of the Reports notes in the Index: "The distribution of an intestate estate in Berbice is *primâ facie* under the North Holland Law." This is quite wrong. The mistake is reproduced in Belmonte's Alphabetical Digest.

[2] *Brit. Gui. Official Gazette*, vol. xx. No. 16.

[3] J. A. Van der Chijs, *Nederlandsch-Indisch Plakaat Boek*, vol. i. p. 363.

[4] *Ibid.* p. 472.

[5] *Ibid.* p. 474.

[6] *Ibid.* p. 543.

In 1766 Governor Van der Parra submitted for the approval of the Seventeen and of the States General the collection known as the New Statutes of Batavia.[2] This Code, though in use in the Courts—so Mr. Van der Chijs informs us—for nearly a century, never in fact received recognition from the highest authority. It had not therefore, strictly, the force of law.[3] In respect of intestate succession it reproduces seriatim the substance of Van Diemen's earlier Code together with the express provisions of the Octrooi above cited. This is plainly wrong. The Old Statutes of Batavia as regards succession cannot have continued to exist side by side with the Octrooi which is inconsistent with them. That the Octrooi, and therefore the Schependoms Recht, was in fact the law of succession for Batavia appears *inter alia* from another portion of Van der Parra's Statutes, where it is laid down that orphan-masters are not liable to actions except on the ground of wilful default or if they act contrary to the clear language of statutes or of the Octrooi on Intestate Succession.[4]

So far we have spoken of the East Indies in general. It remains to see how the law stood, and stands, in Ceylon and in South Africa in particular. In neither of these countries is the matter free from doubt.

For Ceylon we have the guidance of two cases in which the question of intestate succession was carefully considered. In the first of these, decided in 1822,[1] Sir Hardinge Giffard C.J., delivering the judgment of the Court of Appeal, pronounced, not without considerable hesitation, in favour of the view that the North Holland Law obtains in Ceylon. In 1871 the same Court, over which Sir Edward Creasy then presided as Chief Justice, clearly indicated an opposite opinion.[2] The same materials were before the Court on each occasion and the only question which remains open is as to the inference to be drawn from them. The inquiry, it is agreed, must begin with a Resolution of the Council of Ceylon dated December 20, 1758. The Governor of the day having invited the opinion of his Council on the subject of intestate estates and having referred to the Letters Patent of 1661, the members declared "that no alteration or addition to the said Letters Patent is known to them; and that as the same has been granted by the sovereign authority they ought certainly to be observed." Thereupon it was resolved to insert in the Minutes of Council the said Letters Patent with documents relative thereto, viz. besides the West Indian Orders of 1629 and 1636 "the Political Ordinance of Holland dated April 1, 1580, the Interpretation of 1594 and the Placard of the same date upon the subject of the succession of intestates"; and it was further resolved to issue copies of this Resolution and of the Letters Patent and other documents cited to all Courts of Justice "for their guidance and due observation."

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[1] 2 G.P.B. 2634; Van der Vorm, p. 631. The Charter was promulgated in Batavia on February 7, 1661; Van der Chijs, vol. ii. p. 340.

[2] Van der Chijs, vol. ix. p. 404.

[3] *Ibid.* p. 25.

[4] *Ibid.* p. 229. The like provision recurs more than once in later volumes of Van der Chijs.

What is to be understood by "the Placard of the same date"? The puzzle seems insoluble. There is in fact no Placaat of that date relating to intestate succession other than the Interpretation itself. Was, then, some other Placaat intended? Whatever was intended, what happened was that the Placaat annexed to and presumably circulated with the Resolution of 1758 and the other documents therein mentioned was the Placaat of 1599. So the Governor and his Council are convicted of the absurdity of circulating for the guidance and due observation of the Courts of the Island two entirely inconsistent systems of intestate succession. Small wonder that Messrs. Berghuys and Reintons, members of the Worshipful Court of Justice of Colombo, to whom the whole question was referred for consideration and report in the year 1773, declared that "this contemplation brought the undersigned into some confusion." If anything could make confusion worse confounded it was the result of their inquiry. "We will submissively state our opinion and say that we would with full tranquillity guide ourselves according to the contents of the New Statutes of Batavia." At the same time they feel a difficulty in rejecting the authority of the Resolution of 1758, and seek direction from the full Court. The Court is not behind-hand in contributing its own quota to the embroglio. It directs that the estate in question shall be distributed "according to the succession of the law of inheritance planned by the *Old* Statutes of Batavia, as in respect to the law of inheritance of North Holland, the same does agree with the new one"—a truly illuminating conclusion! For, unless a solemn enactment of the States General is to be held of no account, two things are plain, *first* that the Octrooi over-rode the Statutes of 1642, and *secondly* that the Octrooi was not over-ridden by the Statutes of 1766. But here we have the Committee advising in favour of the New Statutes, and the Court deciding in favour of the Old Statutes, while the Resolution which they had to interpret, whatever else it does or omits to do, at all events treats the Octrooi as binding.

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[1] *Dona Clara* v. *Dona Maria.* Ramanathan, 1820-33, p. 33.

[2] *Anon.* Van der Straaten, p. 172, and Appendix A.

It is noticeable that when in 1822 Sir Hardinge Giffard C.J. was called upon to find his clue in such a maze he did not advert in his judgment to the New Statutes of Van der Parra. According to his view (1) the reference to "the Placard of the same date" was a mistake; (2) the Governor and Council intended to promulgate the Placaat of 1599; (3) the Resolution of 1758 was a legislative act. From these premises he concluded: "We are safest in declaring that Placard to be the law of the Island."[1] This decision, as Sir Edward Creasy observed in 1871, is entitled to all the weight due to the respected name of Sir Hardinge Giffard.[2] But it seems impossible to resist the force of Sir Edward Creasy's argument on the other side:

> "It seems rather probable that the mistake, for one undoubtedly exists, was made by the executive officer of the Council in annexing the wrong document to the Resolution. If this be a legislative enactment its words ought not to be altered except on the clearest proof of error. In the present case it is impossible to believe that the Council intended to send to the Courts of Law two inconsistent systems of law for their guidance and observation. And further, the Resolution declares that the Letters Patent are of sovereign authority, and the Letters Patent are not only silent as to the Placaat, but introduce an inconsistent system."[3]

The learned Chief Justice pronounced therefore in favour of the Schependoms scheme of succession as modified by the Charter. He is fortified in this conclusion by finding himself in accord with Burge[4] and with Thomson J., the author of *The Institutes of Ceylon Law*,[5] as well as by the fact that the practice existing in the year 1822 as set out by the judges of the various Provincial Courts in reply to questions proposed by the High Court of Appeal is uniformly founded upon the South Holland Law.

In this conflict of authority one can only say, "ex ingenio suo quisque demat vel addat fidem." If Sir Hardinge Giffard is right, the succession *unde vir et uxor* formed part of the common law of Ceylon. If Sir Edward Creasy is right, it did not. The writer of this article submits under correction that the latter is the better view.

[1] Ramanathan, at p. 38.

[2] Van der Straaten, at p. 174.

[3] *Ibid.* p. 175.

[4] *Commentaries on Colonial and Foreign Laws* (1st ed.), vol. iv. p. 52.

[5] Vol. ii. p. 253.

To-day the question is of merely historical interest. By Ordinance No. 15 of 1876, s. 26, "when any person shall die intestate as to any of his or her property leaving a spouse surviving, the surviving spouse shall inherit one-half of the property of such person"; and by s. 40, "in all questions relating to the distribution of the property of an intestate, if the present Ordinance is silent, the rules of the Roman-Dutch Law as it prevailed in North Holland are to govern and be followed." This last provision might plausibly be supposed to be merely a reiteration—this time by the voice of authority—of a persistent error. But since the scheme of succession in the Ordinance approaches more nearly to the Aasdoms than to the Schependoms system, it will be a charitable inference that the Legislature for once knew its own mind.

The law of South Africa is free from some of the conundrums which have perplexed us in Ceylon, but not from the inevitable confusion between the two systems of succession. In Cape Colony in the case of *Spies* v. *Spies*, (1846) 2 Menz. 476, "the counsel for both parties admitted that, by the Placaat of January 10, 1661, the law of North Holland, including the Political Ordinance of April 1, 1580, and the Interpreting Ordinance of May 13, 1594, was made the law of the Colony." Such *consensus ad idem* would be more impressive if it were not grounded in error. In *Raubenheimer* v. *Exors. of Van Breda*, (1880) Foord 111, which settled the law for Cape Colony, de Villiers C.J. referred to a Resolution of the Governor-General in Council, bearing date June 19, 1714, whereby the Board of Orphan Masters was directed in all cases of succession *ab intestato* to follow ss. 19 to 29 of the Ordinance of 1580 and the Edict of 1594, in so far as they have been adopted by the Charter of 1661. The Charter therefore determines the law for the Cape Province. The learned Chief Justice indeed goes on to say that "it is a mistake to speak either of the North Holland Law or of the South Holland Law as the law of this Colony"; nevertheless, since the Octrooi itself rests upon the Schependoms Law, except where it expressly departs from it, we may accept as generally true the *dictum* of Mr. Justice Smith, that "the South Holland Law as included in the Political Ordinance of 1580 is the law of inheritance *ab intestato* in the Colony."

With regard to the succession of the spouses in particular, the Chief Justice, if correctly reported, let fall an incautious phrase, which has not been followed. In the case of *In re Booysen*, (1880) Foord 188, he observed: "In the course of such administration the wife could only have become entitled to her husband's share of the property held in community upon failure of next of kin." But in *Ex parte Leeuw*, (1905) 22 S.C. 348, Maasdorp J. said: "Several authorities have been quoted on the law of South Holland, which with certain modifications is the law of succession in this Colony, where it is very plainly held that the wife in these cases is not entitled to succeed. Upon a total failure of blood relations the Crown is entitled to claim a vacant inheritance."

For Natal the case of *In re the intestate estate of P. K. Gledhill*, (1891) 12 Nat. L.R. [N.S.] 43, decides in favour of the Schependoms Law. Van Breda's case was cited and followed. From the judgment of Gallwey C.J. it appears that in this Colony too the old error had raised its head. "Some doubt seems to exist as to the law of succession *ab intestato* in Natal. The late Chief Justice seemed to consider that the law of North Holland had been decided by the Cape Bench to be the law in force there."[1]

On the subject of the succession of the spouses there has been some legislation. By Law No. 22 of 1863, s. 2, "Community of goods . . . shall not attach to any spouses who have been or shall be married elsewhere than in South Africa, unless the spouses by agreement exempt themselves from this law," and s. 5 enacts: "When the husband of any marriage, from which community of goods is excluded by the provisions of this law, shall die intestate and leave his wife him surviving, then in any such case the wife so surviving her husband shall be entitled to receive and have one-half of the property belonging to her deceased husband"; but if there is lawful issue of the marriage, by a later law she takes one-third.[2] It has been held that the above section applies whenever community of goods is excluded, whether under s. 2 (*supra*) or by ante-nuptial or post-nuptial contract.

In the Orange Free State and Transvaal provinces intestate succession does not seem to have been the subject of legislation or of judicial decision. One might suppose that since these colonies were settled from the Cape and from Natal they must have the same law of intestate succession. The learned Dr. Nathan, however, makes the startling suggestion that perhaps this is not so. "It is argued that inasmuch as at the time of promulgation of the Charter, the Dutch East India Company had in South Africa jurisdiction only over those territories known as the Colony of the Cape of Good Hope, the Charter cannot without a special promulgation be of any force or effect in colonies . . . which came into existence after the jurisdiction of the Dutch East India Company over the Cape Colony had ceased to exist."[3] But if the law of Cape Colony was not carried into the territories of the Republics, what was? Apart from this channel of influence, there seems to be no reason whatever for deciding in favour of either of the competing schemes of intestate succession, and in the absence of proof of established custom we should be driven to the paradoxical result that these provinces have no law of succession at all. It may be that research in the Master's Office would produce evidence of custom. Meanwhile we shall assume the common law on this subject to be the same in all four provinces.

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[1] See *In re Estate Taylor*, 2 Nat. L.R. [N.S.] 1. The Chief Justice was Sir Henry Connor.

[2] Law 14 of 1882, s. 1.

[3] *The Common Law of South Africa*, vol. iii. p. 1951.

Here our tale ends. We have conducted the reader on a journey through ur continents and as many centuries. The story is not very creditable to e Legislature, but neither can judges, counsel, codifiers, or clerks be cquitted of the human infirmity of error. If the writer has fallen too,—

"Like glistering Phaeton,
Wanting the manage of unruly jades,"—

e has fallen in numerous company. Pending judgment, he ventures to ate his conclusions as follows:

In British Guiana the common law of Demerara and Essequibo admits a rviving spouse to the succession in preference to the Fisc; the common w of Berbice is a stranger to any such rule. There is a statutory succeson over the whole colony to one-half of a deceased spouse's estate who aves no child or descendant of any child him or her surviving.

In Ceylon the common law did not admit the surviving spouse to the ccession. By statute the survivor upon an intestacy always takes half of e deceased's estate, and even the whole in preference to collaterals, not eing the issue of brothers and sisters, more remotely related to the deceased an the fourth degree.[1]

In South Africa the surviving spouse takes nothing, whether by common w or by statute, in the Cape, the Orange Free State, and the Transvaal. In atal the widow, if there is no community, takes half the estate, or one-third there are children of the marriage. If married in community she takes othing by succession.

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[1] Ord. 15 of 1876, s. 36.

THE LAW OF WILLS AND SUCCESSION IN CYPRUS.

A STUDY IN COMPARATIVE LEGISLATION.

[*Contributed by* Anton Bartram, Esq., *Attorney-General for Ceylon.*]

The Law at the Commencement of the British Occupation.—When th British Government assumed the administration of Cyprus, it found population about three-fourths of whom were Christian, and whose famil law as regards marriage, divorce, and illegitimacy was the law of th Orthodox Church, in all matters of wills and succession governed by th sacred law of the Mohammedan faith. Their power of testamentary di position was limited to one-third of the testator's property; and if a ma died intestate his property descended according to the system of successio devised or codified by the Prophet himself for the inhabitants of Arabia— a scheme still cherished in all Moslem countries as one of the greate triumphs of jurisprudence.

In a previous article in this Journal ("The Privilege of the Œcumenica Patriarch") I gave some account of the peculiar position of this department of law in the Turkish Empire so far as it affects Orthodox Christian It had been recognised by the Hatti Humayoun in 1856 that questions c succession between Christian subjects of the Porte might appropriatel be referred to the arbitration of their ecclesiastical chiefs; and i 1890 (twelve years after the commencement of the British occupation) th Œcumenical Patriarch, after prolonged controversy, extending at interval over a long series of years, finally succeeded in re-establishing the ancien privilege claimed by his own community of free testamentary dispositio according to their own law administered by their own tribunals.

The Demand for a New Code.—But in the distant and neglected islan of Cyprus, where the Christian population lived under an autocephalou Archbishop owing no allegiance to the Œcumenical See, these questions ha been suffered to sleep. It was not surprising then that among the stirring of the new era of the British occupation these questions awoke. Th Orthodox community manifested a desire to have a law unto itself in thes matters, and the Government was persuaded to address itself to th problem.

From the point of view of the questions with which this Journal is con erned the problem was one of singular interest. English lawyers, familiar nly with English law, were to act in concert with an ancient community vhose law of family status was wholly Roman, but who in matters of wills nd succession had hitherto lived under the sacred law of Islam, with a view o a new Code of Wills and Succession, which it was generally recognised vould also govern all domiciled foreigners who were not Moslems. From ne point of view what was contemplated was in effect a revolution. The heri law, the common law of the country, was to be displaced by this new ode, and to be relegated to the position of an exceptional law applicable nly to the Moslem community. The result of these efforts upon this irgin soil it is the object of this article to explain.

History of the Legislation.—In the session of the Legislative Council f 1884 a select committee was appointed to consider the question, including our "Greek Christian" members, one of whom was the late Bishop of ition. At this time it happened that the Parliament of the Kingdom f Greece was considering a proposed code on this very subject. The Greek ill was practically speaking a translation of Arts. 720-1049 of the Italian ivil Code. This Greek translation of a section of the Italian Civil Code eems to have become the basis of the discussions of the committee. Apparently he subject was considered to be too large for a single session. Accordingly, hose clauses of the Bill which related to Intestate Succession (with the ecessary adaptations) were translated into English and made into a separate ill. A summary of the Bill was published in the *Cyprus Gazette*, March 5, 884 (No. 127), where it was stated, strangely enough, that "the principles y which intestate succession will be regulated under the proposed enactment are those of the Roman law." A more comprehensive measure vas promised for a later date. The Bill passed into law and became the ntestate Succession Law 1884. It is in effect an adaptation of Arts. 720-58 f the Italian Civil Code, which are themselves an adaptation (with important ariations) of Arts. 718-73 of the Code Napoléon.

The remainder of this Greek translation of these selected chapters of he Italian Civil Code (themselves an adaptation of the French) was then ranslated into English and gazetted as a Government Bill on January 3, 885 (No. 151). Nothing seems to have come of this Bill in the session f 1885. In 1886 a select committee approved it, with a few modifications, nd recommended that it should be referred to the Judges of the Supreme ourt. At this point the question seems to have taken a new development. arious successive drafts appear in the official gazette, the chief feature of hich is an attempt to combine the Italian scheme of the devolution of the state on intestacy and the rights of the descendants and ascendants to legal portion, with the English law of wills and letters of administration. t last, in 1894, a law was passed called "The Wills and Succession Law, 894." This again seems to have proved unsatisfactory, for in the following ear it was again thrown into the melting-pot, parts of it were redrafted, and other parts subjected to important alterations; and out of this process issued the peculiar measure which now regulates the successions and testamentary rights of the Christians of Cyprus, the Wills and Succession Law, 1895.

Character of the Wills and Succession Law, 1895.—The law of 1895 is of a singularly composite character. It is in part English, in part Italian, in part Turkish, and in part wholly Cypriot. Yet the English parts are not wholly English, the Italian parts have been so altered that in some instances they are quite unrecognisable, and the Turkish parts are subject to modifications unknown in Turkey.

The principal points which have to be considered in any scheme dealing with the subject are: *Firstly*, the form of a will and the formalities attending its execution and attestation; *Secondly*, the method of the administration of an estate, whether testate or intestate; *Thirdly*, the limitation of a testator's power of disposition by the reservation of legal portions to certain favoured classes of kindred and the surviving spouse; *Fourthly*, the devolution of the property on intestacy. To these may be added a fifth point, which in Cyprus has a special importance, and that is the nature of the property that may be disposed of by will. Now as to the first two of these points (form of wills and administration of estates) the law is mainly English; as to the second two (legal portions and devolutions on intestacy) it is mainly Italian; and as to the last (the nature of property subject to testamentary disposition) it is mainly Turkish. We will now proceed to consider these points seriatim.

The English Portions: Domicile, Wills, and Administration.—The subjects on which English law has been adopted are domicile, wills and administration. The law of domicile is stated in six brief sections (4-9). The provisions as to the form, attestation, revocation, and effect of wills are in the main taken from the Wills Act, 1837, but with the following curious variations. The English law requires two attesting witnesses; the Cyprus law three. According to the English law "no form of attestation shall be necessary" (s. 9). Indeed no actual attestation clause of any description is required (*Roberts* v. *Phillips*, 4 E. & B. 450). In Cyprus no will is valid unless it contains an attestation clause in a prescribed form "or to the like effect" (s. 22).[1] According to the English law, there is a very considerable latitude as to the place of the signature. It may be at, or after, or following, or under, or beside, or opposite the end of the will, or with a blank space intervening, or in the testimonium clause, or attestation clause, or overleaf, with the sole reservation that it has no operative effect with regard to anything written under or after it (Wills Act Amendment Act, 1852, s. 1). According to the Cyprus law it must be made *at the end*, or the will is absolutely invalid (s. 22). It is strange that the Cyprus draughtsman, in embodying the English law, should have set himself to make it less easy for a man to make a will and to increase the pitfalls into which the simple may stray, but this is what he (or the legislature) seems to have done. In England the age of the testamentary capacity is twenty-one, in Cyprus eighteen. It is not apparent on what principle this age was fixed, as it does not correspond to anything either in Roman or Turkish law. The provisions as to interlineations and alterations made after execution also differ from those of the English law. In England these are valid if separately executed in the prescribed manner (s. 21). In Cyprus all such interlineations and alterations are void absolutely, and the presumption is that all interlineations and alterations were made after execution (Art. 36). Besides marriage, the birth of a child after execution, if the testator had previously no children, effects a revocation, but neither marriage nor such a birth operates as a revocation if it appears on the face of the will that it was made in contemplation of such marriage or birth.

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[1] In the year 1910 a will was declared by the Supreme Court to be invalid on the ground that, though it was signed in the presence of the testator and at his request, the words "in his presence and at his request" were by a clerical error omitted from the attestation clause.

The probate and administration provisions are also modelled on English law with this highly significant difference, that in case of intestacy it is not compulsory to take out letters of administration.[1] The law expressly provides (s. 18) that on grant of probate or letters of administration the rights *and liabilities* attaching to the testator's property vest in the executor or administrator and that "from and after the administration of the property they are vested and devolve upon the persons legally entitled."[2] Nothing is said about the vesting of the property on intestacy before final administration where no letters of administration are taken out. By what law is this question to be decided? Presumably by the Sheri law; but here again the statute is silent.

There is another point which illustrates the perplexities which await a "comparative legislator" who seeks to apply the law of one country to another. S. 51 provides that "debts on bonds and other secured debts" are to be paid in priority to "simple contract debts." It is not clear what the draughtsman meant by "other secured debts." One would have thought that in the case of a secured debt the security already gives the creditor a sufficient priority. As to "bonds," Turkish law is innocent of anything in the nature of specialties. Certain forms of written acknowledgments of debt in common use are conventionally called "bonds" by English lawyers and judges in Cyprus, but it is not apparent in what respect the debts acknowledged in these documents differ from "simple contract debts."

So much for the English provisions. Let us now consider the Italian.

The Italian Portions.—(*a*) *Intestate Succession.*—It has already been related how the Orthodox Christians of Cyprus were by the law of 1884 made subject in this respect to the law of Italy, and were at the same time informed officially that the rules of the new statute were in accordance with those of the Roman law.

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[1] It is not surprising to learn that under these circumstances letters of administration are not taken out. In only four cases have they been applied for in the whole of Cyprus during the past five years.

[2] This section as it stands in the text of the law is absolutely unintelligible. The matter is not worth discussing here, but when the law comes to be revised the puzzle will be found to have been explained in an official minute paper.

The draughtsman of the law of 1894 apparently did not like the drafting of the law of 1884, and redrafted the sections of that law which he embodied in his own; and the draughtsman of the law of 1895, not liking the terminology of the law of 1894, altered them again in accordance with his own ideas. They appear now as s. 43 of the law of 1895, and though substantially in accordance with the Italian law, they show traces of English influence and of the successive crucibles through which they have passed.

It is of course unnecessary to say that the rules of intestate succession in the Italian Civil Code are not identical with those of the Roman law. They are derived ultimately from the Roman law through the French Code Civil, and the provisions of the French Code Civil have been very largely influenced by old French customary law.

The orders of succession in Roman law, as fixed by the 118th Novel of Justinian, were extremely simple. They consisted of four successively exclusive classes: *the first*, the descendants; *the second*, the ascendants and "privileged collaterals" (*i.e.* brothers and sisters of the full blood and the first generation of their children); *the third*, the brother and sister of the half blood and their descendants; *the fourth*, the collaterals.

In the Italian scheme of succession, the orders are reduced to three: *the first*, the descendants; *the second*, the ancestors and "privileged collaterals" (*i.e.* brothers and sisters and their descendants *indefinitely*); *the third*, the ordinary collaterals. In sharing with brothers and sisters and their descendants ancestors are entitled to at least one-third of the whole. Brothers and sisters of the half blood share with brothers and sisters of the full blood, and do not constitute a separate class, but they take a half instead of a full share. Like French and unlike Roman law, the Italian Code makes special provision for illegitimate children. It limits succession to the tenth degree of kindred.[1]

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[1] As Italian law in this matter is derived from the Roman through the French, it may be interesting to trace the process. The principal points on which French law differs from the Roman are the following:

1. It limits the privileges of ancestors in Class II. and enlarges those of the collaterals—that is to say, it excludes grandparents and great-grandparents, and includes the grandchildren, great-grandchildren, etc., of brothers and sisters.

2. It provides that in Class II., where parents share the inheritance with privileged collaterals, they shall have reserved to them at least one-half of the whole.

3. It does not make brothers and sisters of the full blood exclude those of the half blood, but gives the brother a half share.

4. It establishes the system of the *fente entre les deux lignes* (*i.e.* the equal division of the estate between the paternal and the maternal lines). (See Planiol, *Droit Civil.*)

5. It gives illegitimate children a limited right of succession.

6. It limits succession to the twelfth degree of kindred.

The Italian Code closely follows the French Code, with the following (amongst other) variations:

1. It restores grandparents, great-grandparents, etc., to Class II. (subject always

The Cyprus law adopts the Italian scheme as it stands, with only three odifications. In the first place it abolishes the ancestor's reserve of one-ird in sharing with brothers and sisters. Ancestors, brothers, and sisters all are alike. In the second place, it makes no provision whatever for illegiti-ates. Legitimate children alone are recognised. Such is the austere virtue f the Cyprus legislature that the unfortunate illegitimate does not even succeed the property of his mother. As in England, he is *filius nullius*. In the ird place, children are so defined as to exclude adopted children. The atus acquired by adoption, though recognised by the Orthodox Church, and eating an obstacle to marriage, is thus ignored by the law. [See the case of *ano* v. *Jano*, decided by the Supreme Court of Cyprus in 1910.]

(*b*) *The Surviving Spouse.*—Among the principal problems that confront e "comparative legislator" in the sphere of wills and succession is that of e "surviving spouse," or as they phrase it in French, the "conjoint survivant." he Cyprus legislator struggled with this problem, and with the aid of the alian Code evolved a solution which is almost entirely his own.

The Roman law, as settled by successive novels of Justinian (53, 115, and 7), made provision only for such widows as were both dowerless and stitute. The dowerless and destitute widow was entitled to a fourth of the tate. If she had no children surviving with her, her interest was an absolute terest. If she had surviving children, it was usufructuary only, and if the ildren were more than three in number, her share was reduced to a child's are. The Emperor Leo, by his 106th Novel, made the widow's share solute in any event, subject to its being reduced to a usufructuary interest, having children, she married again. Apart from this special right of the stitute and dowerless widow, the Roman law recognised no right of ccession in the surviving spouse, except in default of kindred.

The French Civil Code treated the surviving spouse with strange neglect. is said that this neglect was due to a misapprehension, and that it was rongly imagined, when the final draft of the Code was settled, that the rviving spouse was specially provided for (see Planiol, *Droit Civil*, iii. 1868). was not until 1891 that the surviving spouse, in the event of intestacy, was ven a life interest to the amount of a quarter of the estate if there are rviving children, or if there are no children to the amount of one-half. This ght was not confined to destitute and dowerless widows, but extended to all rviving spouses, male and female alike.

The Italian Code (the immediate parent of the Cyprus law) gave to the rviving spouse, in the event of intestacy, a usufructuary interest, varying from

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the principle that among ancestors those nearer in degree exclude those more mote).

2. It reduces the reserve of ancestors sharing with privileged collaterals from one-lf to one-third.

3. It abolishes the *fente*.

4. It increases the shares of the illegitimate children.

5. It limits succession to the tenth instead of the twelfth degree of kindred.

that of a child's portion to two-thirds of the estate, with an absolute right to the whole estate in the absence of kindred within the sixth degree.

The Cyprus legislator in the law of 1884 adapted the Italian scheme on this point exactly as it stood. But usufructuary interests were things unknown to the Christians of Cyprus, and seemed to have proved both unwelcome and inconvenient. Accordingly in the laws of 1894 and 1895 the usufructuary interest of the spouse was converted into a small absolute fixed share. If the deceased on intestacy leaves children or descendants, the share is one-sixth, or if the children are more than five in number, a child's share. If he leaves no children or descendants, but relatives within the sixth degree, the share of the spouse is one-third. If he leaves no relative within the sixth degree, the spouse takes the whole. Here again it will be observed the Cyprus law is wholly original.

So far we have spoken of the rights of the surviving spouse in the event of intestacy. The right of the surviving spouse to a testamentary reserve where the deceased leaves a will belongs rather to the next section of this article. It may, however, be convenient to say at this point that the right given to the destitute and dowerless widow by Roman law belonged to her whether the deceased died testate or intestate. In French law, on the other hand, the surviving spouse has no testamentary reserve. The Italian Code accords a testamentary reserve to the surviving spouse which is on similar lines to the reserve on intestacy, but not precisely identical. Like the reserve on intestacy, it is usufructuary in character. Cyprus follows Italy in according a testamentary reserve to the surviving spouse—but it is an absolute and not a usufructuary interest and is more fully discussed below.

(*c*) *Testamentary Reserves, or* "*the Legal Portion.*"—We now come to the most peculiar portion of the Cyprus law—that relating to the restriction of the freedom of disposition. English law is unique in allowing to a testator an absolutely unrestricted freedom of testamentary disposition. Cyprus follows the rest of the world, and the law of 1895 has its special sections dealing with "the disposable portion" and the testamentary reserves.

It will have been observed that the Cyprus statute in many respects is highly original. It must be confessed, however, that this department of it is at once arbitrary and incomprehensible. It has been shaped and reshaped by successive draughtsmen with no apparent regard to the principles it involves, and it is expressed in phraseology which seems designed to disguise rather than to express ideas.

The fundamental principle on which all enactments of this sort are based is extremely simple. It is that of the *legitima portio* of Roman law. Certain favoured classes of kindred have a testamentary reserve. The favoured classes are *those in a direct line with the testator*, i.e. descendants and ascendants.[1]

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[1] Roman law also recognises a certain qualified reserve in brothers and sisters, in cases where the testator has preferred to them a person who is *infamis*, but the circumstances under which this reserve arises are so singular that it may be ignored for practical purposes.

The amount of the reserve varies in different systems of law, though its objects are everywhere the same. In Roman law the reserve of the descendants varies from one-third to a half according to the number of children. In French law it varies from a half to three-quarters. In Italian it is an absolute half. As to the reserve of the ascendants, in Roman law it is a quarter, in French a quarter for each line, in Italian one-third. In Roman and Italian law these reserves are subject to the rights of the surviving spouse already explained. The principle is so simple that every peasant can understand it. Thus if a man dies intestate, leaving children or grandchildren, they are entitled to one-half of his property. If he leaves no children or grandchildren, but parents or grandparents, these are entitled to a third. He may dispose of the rest as he pleases. It is sometimes convenient to look at the matter from this point of view, and to say that the disposable portion of a man's estate varies with circumstances. But the object of the law is not to regulate the disposable portion of a man's estate. Its object is to secure and define the testamentary reserves of the descendants and ascendants. Now the Cyprus legislator seems to approach the question not from the point of view of making provision for special members of the testator's family, but from the point of view of the restriction of the testator's power of disposition. It is not without some trouble that one discovers from the sections of the law who are the heirs whom it designs to favour, or what is the precise bounty which it designs to accord to them.

The system of testamentary reserves which the Cyprus law has adopted is absolutely without parallel in any system of civilised jurisprudence, and is certainly never likely to be followed as a model by any other country. It would no doubt be possible by a comparison of the various drafts and laws from time to time issued and passed (and the task would not be without interest) to trace the process by which the combined efforts of draughtsman and Council starting from the simple provisions of the Italian Code attained to their final unique conclusion. Unfortunately this would transcend the limits of the space allotted to this article, and it must be sufficient to indicate the result arrived at.

The Cyprus system of testamentary reserves is as follows: The absolute reserve of the ascendants—which exists throughout the Mediterranean, *i.e.* in France, Italy and Greece, and among the Christians of Turkey and Egypt—is abolished altogether. The legal portion of the descendants (as in Italy) is one-half of the whole estate—provided that there is no surviving spouse. If there is a surviving spouse, the legal portion of the descendants is the peculiar fraction of five-ninths.[1] As to other relatives, if there is a surviving spouse—and only in that event—ancestors and collaterals to the sixth degree of kindred have a reserve of two-ninths, taking this reserve according to the rules of intestate succession. But if, to their misfortune, the spouse has predeceased the testator, these relatives have no legal portion whatever.

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[1] Thus a Cypriot testator with an estate of £900 leaves a son surviving him. The son is entitled to a reserve of £450. If the same person leaves a widow as well as a son, the son's legal portion becomes £500. What is the reason for this difference? If there ever was a reason it has now been forgotten.

The position of the surviving spouse is equally original, and though obscurely stated works out to a surprisingly simple result. The surviving spouse is entitled absolutely to one-ninth of the testator's estate, so long as he leaves any relatives within the sixth degree of the kindred. If there are no such relatives the spouse's portion is one-third. But the singular feature of the institution is this. In Roman and Italian law the spouse's testamentary portion is not an additional fetter on the testator's power of disposition. It is taken out of the reserve accorded to the descendants or ascendants. In Cyprus the very reverse is the case. So far from the descendants getting less because of the spouse's reserve, they actually get more. Indeed, of a half they get five-ninths. As to the other favoured relatives up to the sixth degree of kindred, it is only in the event of the spouse surviving to claim a reserve that they themselves get any reserve at all.

It may be said with confidence that no country has ever enacted in the past, or is ever likely to enact in the future, that a testamentary reserve of two-ninths of the estate shall be conferred on ascendants and collaterals to the sixth degree of kindred, in the event of the testator leaving a surviving spouse and in that event alone. It is impossible to suggest any principle on which this singular and original scheme can be justified, and one is at a loss to know why the draughtsman proposed it or why the legislature enacted it.

If the result is extraordinary the language in which it is expressed is not less so. Its meaning has to be extracted by a sort of algebraical process, in which words are not given their natural meaning, but a special significance arbitrarily assigned to them. "Legal portion"—*legitima portio*—is an expression consecrated from all time. It means the portion legally reserved to the heir in question. It is *his* legal portion. In the phraseology of the Cyprus law the "legal portion" has become the "legal portion" of the testator. It means a certain portion of *his* estate. The "legal portion" is that portion of the testator's estate which he cannot dispose of by will, and it is so called in contradistinction to another portion of his estate, *i.e.* the "disposable portion." That the legislator should call the portion a man cannot legally dispose of his "legal portion" is peculiar enough. But the legislator is not content with this. Finding it necessary to enlarge his definition for certain purposes, he declared that a testator's "legal portion" shall include *what he has not in fact disposed of*.[1]

Thus a man dies intestate. Then his whole estate is his "legal portion," and, strange as it may seem, that part of the law which relates to the distribution of an estate on intestacy is not so described, but is headed "*Rights of*

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[1] S. 19: "The part of the property which he may so dispose of is hereinafter termed the disposable portion, to distinguish it from that part of his property *which he may not so dispose or has not so disposed of*, which is hereinafter termed the 'legal portion.'"

succession to legal portion." Similarly a man entitled to dispose of all his property and desiring to do so, by accident omits to dispose of part of it, or, as we say, dies intestate as to that part. This part is the "legal portion" of his estate. This peculiar phraseology pervades the law and has a most perplexing effect. The law in fact produces upon the mind the same impression as that of an ancient fabric which modern masons, unconscious of the original design of the building, have restored and adapted according to their own ideas.

Other Italian Features.—There are three other features of the law which may be traced to the Italian model, though they are not very easily recognisable in their present guise.

The first is the institution known in France as the "rapport," in Italy as "Collazione," in Roman law as "Collatio bonorum," and in our own law as "hotchpotch." In our own law gifts on the one hand and legacies and inheritances on the other are things apart. In French and Italian law they are closely associated. Thus in cases of intestacy in French law, it is presumed that in exercising liberality to one of his heirs during his life, the deceased did not desire to infringe the principle of equality among heirs in regard to their inheritance. Consequently in the partition of the estate liberalities received during life must be brought into account (French Code, Arts. 843 *seqq.*; Italian Code, Arts. 1001 *seqq.*). So also in cases where the deceased leaves a will and legal portions have to be calculated, in estimating the corpus of the testator's property for the purposes of the calculation, liberalities made during his life are brought into account. Gifts made to strangers are then attributed to the *quotité disposable*, and gifts to the *héritiers réservataires* are attributed to the reserve, and in the distribution of the reserve the liberalities *inter vivos* are brought into account as between the heirs (French Code, Art. 924; Italian Code, Art. 1026). The only remnant of this system in the Cyprus law is to be found in s. 70, which requires any child or descendant who succeeds to any portion of the estate on intestacy or share in the testamentary reserve under a will to bring into account all that he has received from the deceased during his life by way of advancement, or marriage portion, or by way of gift made in contemplation of death.

The second of these features relates to what are known as "substitutions." The nature of a "substitution" does not correspond with exactitude to anything in our own law, though we are familiar enough with the substance of the idea in the rule against perpetuities. Substitutions are of two kinds. There is in the first place what is known in French law as the *substitution vulgaire.* This is simply the case of a testator making a bequest to A, and providing that in the event of A predeceasing him, it shall go to B. The testator thus "substitutes" A for B. This is a form of substitution which has excited no controversy and is universally legitimised (see French Civil Code, Art. 898; Italian Civil Code, Art. 895). In the second place, however, there is the *substitution fideicommissaire*, which is a very different thing and which is defined by M. Planiol (*Traité de Droit Civil*, iii. 3265) as follows: "Toute disposition par laquelle l'auteur d'une libéralité charge la personne gratifiée de conserver toute sa vie les biens qu'il lui donne, pour les transmettre en mourant à une seconde personne désignée par le disposant."[1] The abuses of substitutions upon substitutions in early French law led to restrictions similar to our rule against perpetuities. The Revolution, however, abolished this class of substitutions altogether, and the Code Civil formally prohibits them ("les substitutions sont prohibées," Art. 896). The Italian Code follows the French ("tale sostituzione e vietata," Art. 899). The Cyprus draft Bill, as originally gazetted, contained this general prohibition of "fideicommissary substitutions" (clause 105), as well as the express authorisation of the "substitution vulgaire" (clause 101). The Bill passed through the hands of draughtsman after draughtsman, and in the final result the general prohibition of the "fideicommissary substitution" disappeared altogether. The authorisation of the "substitution vulgaire," however, remained in the following cryptic form: "A testator shall have the power in disposing of the whole or any portion of his property by will, to make provision therein *for the substitution of any heir or legatee* mentioned in his will" (s. 20). The "substitution" of one legatee for another is a simple operation. If the section simply means that a testator may leave £100 to A, or in the event of A predeceasing him to B, it is difficult to see why it was necessary to say so expressly. The "substitution" of one heir for another is another matter. The "institutio heredis" does not find a place in this statute, which defines an "heir" as "a person who by operation of law succeeds to the property of a deceased person." So far as this part of the section is concerned it is difficult to assign any intelligible interpretation to it, nor shall we ever know its meaning until some adventurous Cypriot Christian attempts the operation of "substituting one heir for another," and the case comes before the Supreme Court.[2]

The third and last Italian feature is that of "incapacity to succeed through crime." It is a principle of very general application that you shall not first kill a man and then inherit his property. It existed in Roman law, it exists in the modern Roman-Byzantine law as administered in Constantinople (Karavokyros, *Droit Successoral*, Art. 341), in Mohammedan law (Sir Roland Wilson, *Digest of Anglo-Mohammedan Law*, 267), in French law (Code Civil, 727), and in Italian law (Codice civile, 725). French and Italian law extend the incapacity to persons guilty of attempted homicide. The homicide need not be premeditated, but the Italian law requires that it shall be intentional. The Cyprus legislator treats his models with a fine sense of freedom. He limits the application of the principle to cases of premeditated homicide, but he extends it to cases in which a person has killed or attempted to kill "the child, parent, husband, or wife" of the præpositus. It is not by any means clear on what principle it should be declared that a man who has shot at his grandfather should be incapable of succeeding to his father, or why it should be considered worse to kill a man's father than to kill his brother. But enough has been said already to show that consistency of principle is not one of the distinguishing features of this statute.

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[1] For a full discussion of the subject of substitutions, see Planiol, iii. 3264 *seqq.*, and in particular for the distinction between "substitutions" and "dispositions or usufruct," see par. 3294.

[2] The source of the confusion will be plain enough to any one who refers to Art. 895 of the Italian Civil Code: "Puo all' erede instituito od al legatario sostituirsi un altra persona, nel caso che alcuno di esse non possa o non voglia accettare l'eredita o il legato."

The Turkish Portions.—Roman Law and the systems derived from the Roman law limit the powers of disposition of the testator by the principle of testamentary reserves. Turkish law imposes a yet further limitation. The Moslem law of inheritance draws no distinction between movables and immovables. On the other hand, certain classes of immovable property, which a man is free to sell or otherwise dispose of during his lifetime and which devolve upon certain heirs at his death, are not capable of being disposed of by will. Those classes of immovable property are, firstly, *arazi mirie* (or domain lands), which comprise practically all the arable lands of the empire, and vaqf lands (or lands dedicated to pious uses), more particularly *ijaretein vaqfs*, which comprise the greater part of the house properties in the principal cities.[1]

The devolution of *arazi mirie* on death is governed by the Land Code and an amending law of the year 1867. These laws indicate special classes of heirs on whom a man's *arazi mirie* may devolve on his death. They are, in effect, his children, grandchildren, brothers, sisters, and wife.

As to *ijaretein vaqfs*, these originally devolved by custom on the children of the possessor. A law of the year 1867 extended this right of inheritance on the same lines as that of *arazi mirie*; but there are certain differences in the two schemes of devolution. This law of 1867 was originally optional. In 1875 it was made compulsory, and in 1876 optional again. The statutes regulating these two schemes of succession apply to Moslems and non-Moslems alike.

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[1] The ordinary vaqf (or "single-rent vaqf") is vested in trustees. It cannot be sold r mortgaged, and can only be leased for terms of three years, unless the Court in special ircumstances otherwise order. The *ijaretein vaqf*, however, or "double-rent vaqf," is ractically private property. By the payment of a lump sum (the first rent), which may e compared to a premium, the occupier acquires the possession in perpetuity, with the ower of sale and mortgage, subject to the payment of a small annual rent (the second ent). On his death it descends to certain prescribed heirs.

Cf. Sir R. K. Wilson, *Digest of Anglo-Mohammedan Law*, p. 254: "Like the Roman, nd unlike the English system, the Mohammedan law of inheritance shows no distinction etween movable and immovable property. But so rooted is this distinction in the nature f things, that in all Mohammedan countries we find two other principles so applied as withdraw great masses of immovable property from the operation of the law of heritance, namely, (1) the principle of the paramount landlordship of the sovereign, and 2) the principle of *vaqf* or religious dedication."

Thus in Turkish law there is one scheme of devolution for immovables pure and simple, *i.e.* all lands and other immovables that are not part of the domain, or have not been devoted to pious uses (comprising generally houses, gardens, orchards, vineyards, and fruit-trees, and structures established on *arazi mirie* by the permission or acquiescence of the Government). There is a second and separate scheme of devolution for the general mass of agricultural lands, and a third scheme of devolution for *ijaretein vaqfs.*

Now Cyprus is almost purely agricultural. It is a country of villages. Out of a population of a quarter of a million less than 40,000 are reckoned as living in towns, and of these towns only one, Nicosia, has more than 10,000 inhabitants.[1] *Arazi mirie* consequently constitutes the staple property of the ordinary Cyprus villager. The question naturally arose whether under the new law Cyprus was to adopt for the purpose of its Christian inhabitants these peculiar Ottoman restrictions on the power of testamentary disposition. If a man cannot dispose of the principal part of his property at all, and five-ninths of what is subject to disposition must necessarily go to his children and another one-ninth to his wife absolutely, it is obvious that his right to make a will can be of very little use to him.

Why then did not the new law, which was intended to put the wills and successions of Cyprus Christians on a new and reasonable basis, sweep away this triple scheme of succession and these interesting but arbitrary restrictions upon the power of testamentary disposition? Why, in fact, did it not put *arazi mirie* and *ijaretein vaqfs* on the same footing as any other property? The answer is a simple one. The schemes of succession for *arazi mirie* and *ijaretein vaqfs* being less extensive than those of ordinary property, the percentage of cases in which there is a failure of heirs is necessarily more considerable in these two categories of property than any others. On a failure of the statutory heirs in the case of *arazi mirie* the lands escheat to the Crown; in the case of *ijaretein vaqfs* to the pious foundation. Had these two categories therefore been put upon the same footing as other property, the value of these escheats would have been lost.

In view of this situation the legislator adapted a solution which can only be described as mysterious. With regard of the *ijaretein vaqfs*, he brought within the scope of the law all such vaqfs "where there are heirs upon whom the property would devolve." Thus all such vaqfs ranked with the other property of the deceased, and were subject to the same powers of testamentary disposition, while at the same time the escheat rights of the foundation were preserved intact. Why then was this same principle applied to *arazi mirie*? It is impossible to say. All that one knows is that it was not. *Arazi mirie*, the chief property of four-fifths of the inhabitants of Cyprus, remain altogether outside the scope of the law. It is to be presumed that there was some reason for this distinction, which seemed good and sufficient at the time, but what it was does not appear from the text of the law.[1]

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[1] This was written before the census of 1911. The population is now 273,000, and two other towns have now attained the dignity of a population over 10,000.

Suggestions for Revision.—From whatever point of view a lawyer contemplates this law his feelings must be the same. Whether it be for the sake of the interests of the people of Cyprus, or for the sake of general legal principles, or for the sake of the principles of comparative legislation, or for the sake of the credit of British colonial administration, every one must feel that sooner or later this law should be revised. Whether any one will be inspired to undertake the task it is impossible to prophesy, but in the hope that such a reformer may arise the present writer ventures to put forward certain suggestions as to the lines on which the revision should proceed.

(i) *Assimilation of Arazi Mirie to Mulk.*—In the first place the now arbitrary and useless distinction between *arazi mirie* and *mulk*, so far as the law of succession to non-Moslem estates is concerned, should be done away with. "Property," in fact, should be defined so as to include *arazi mirie.* When this is done a testator in dealing with his property will be able to deal with the whole of it, and not merely a minor portion of it. If necessary the interests of the Treasury might be secured by a provision similar to that in the present law relating to *ijaretein vaqf.* It is believed, however, that both official opinion and the opinion of the legal profession are in favour of a general assimilation of the tenure of *mulk* and *arazi mirie* for all purposes, and if this were carried out the land law of Cyprus would be immensely simplified.

(ii) *Regulation of Administration on Intestacy.*—Something should be done to regulate the administration of an estate upon intestacy. I do not mean, of course, to suggest that letters of administration should be made compulsory. The population of Cyprus is not ripe for any such measure. Nevertheless, the principles governing the vesting of the property, the rights and duties of the heirs, the payment of the debts, and the distribution of the shares should be more clearly defined, so that the law may serve as a reasonably complete code. It may be suggested that the practice in force in France, Italy, and Greece might be studied in connection with such principles of practice as actually prevail in Cyprus, so that a simple system may be devised which shall be in harmony with the habits and on a level with the standards of the population.

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[1] If the definition of the law were to be strictly interpreted, *arazi mirie* would be included in the law as "movable property." Thus, "'movable property' *includes all property other than immovable property as hereinafter defined.*" "Immovable property" is defined as "immovable property situate in Cyprus of the following categories: (1) *Mulk* (*i.e.* property held in full ownership), (2) vaqf property—held as *ijaretein.*" It follows of necessity therefore that "movable property" must include *arazi mirie.* The Courts have, however, held that though this is the logical meaning of the definition it is not its actual meaning.

The law is in fact very loosely drafted. It may not be irrelevant to draw attention at this point to another instance of the same kind.

According to certain Turkish statutes, as interpreted by Turkish Courts in Turkey, a man's *arazi mirie* is not ordinarily subject to his debts after his death. According to these same statutes as interpreted by English judges in Cyprus, it is so subject. This is settled law. Yet (bearing in mind that under the law of 1895 "property" does not include *arazi mirie*) what are we to say to the following (s. 51): "The heirs who have accepted an inheritance are liable to pay the debts of the deceased so far as *the property* of the deceased that has come into their hands is sufficient for the payment thereof, *and no further.*" Does this mean that the heirs are not liable to the extent of the *arazi mirie* that has devolved upon them? The section has not yet been judicially interpreted.

(iii) *Simplification of Wills.*—The English principles with regard to the form and attestation of wills should be established in their full simplicity, and the unfortunate and absurd technicalities which now impair this part of the law should be eliminated.

(iv) *Restoration of the Roman Scheme of Intestate Succession.*—In the view of the present writer the Italian scheme of intestate succession, which has no historic justification in a Cyprus code, which is beyond the comprehension of the plain man, and which it requires a historic disquisition to explain to the man of education, should be replaced by the original scheme of succession of the Roman law, which is in force (or which is said to be in force) in the Patriarchal tribunal of Constantinople, in the Patriarchal tribunal of Alexandria, and in the kingdom of Greece. For the benefit of any future draughtsman who may approach the question it may be mentioned that this scheme of succession has already been admirably codified by Mr. Karavokyros in his excellent manual, *Le Droit Successoral.* If this were done, it would be possible for any advocate who approaches the consideration of this part of the law to do so with some knowledge of the principles on which it is based. A great part of the advocates who are concerned with this law have had their legal training in Athens; and all of them, whether trained in Athens or not, possess admirable text-books in Greek in which the principles of the Roman law of succession, as observed in the kingdom of Greece, are expounded in a manner which leaves nothing to be desired.

(v) *Restoration of the Roman* "*legitima portio.*"—The sections relating to the testamentary reserve should be reconsidered, and it is the hope of the present writer that such a reconsideration would lead to the restoration of the ordinary *portiones legitimæ* of the Roman law. Is it really necessary to abolish the reserve of the ancestor? What possible consideration can have moved the legislature of Cyprus to this ruthless resolve? But at any rate, if the reserves are to be confined to the descendant and the surviving spouse, let this be stated in plain language, and let the fantastic contingent reserve which the present law gives to relatives up to the sixth degree of kindred be swept out of the law.

(vi) *Reconsideration of the Position of the Surviving Spouse.*—It may be hoped too that the position of the surviving spouse may also be reconsidered, in view of the fact that the testator's power of disposition and the scope of the new rules of intestate succession would extend to the whole of the estate. It must surely be apparent that usufructuary interest in a definite portion of he estate, in derogation of the rights of the heirs entitled to a legal portion, ut limited to the life of the surviving spouse, is far more in accordance with he nature of things than the present expedient of a small absolute interest, ndependent of the testamentary reserve.

(vii) *Recognition of Adopted and Illegitimate Children.*—It may be true that doption in Cyprus is obsolete, but it is part of the law of the Church, and s still ecclesiastically possible. The adoption service holds a place in the Μεγα Ευχολόγιον and if a child were adopted in Cyprus to-day the adoption vould constitute an "impediment to marriage" (Κώλυρια γάριον). Why hould the Orthodox community of Cyprus thus cut itself off from the other rthodox communities of the Levant observing the same religious law? Moreover, the measure which it thus applies to itself is also applied under he law to devolution of immovable property situated in Cyprus belonging to nembers of other nationalities. Now why should the law of Cyprus refuse o recognise for this purpose the status of adoption as it exists in France, or taly, or Greece, or for the matter of that among Christians in other parts f the Ottoman Empire? This is surely a point that requires correction.

Further, something should clearly be done for the unfortunate illegitimate. t is true that illegitimacy is rare in Cyprus. This is no doubt much to the redit of the island, and explains the austerity of the legislature in the resent law. But the illegitimate can hardly be altogether non-existent. Under the present law applicable to the devolution of *arazi mirie* the llegitimate child at any rate succeeds to the *arizi mirie* of his mother. If as above suggested) *arazi mirie* were brought within the scope of the law, it vould hardly be possible to deprive the illegitimate child of this poor rivilege. Indeed, it is a privilege which might well be extended so as to nclude all categories of property.

(viii) *General Revision.*—Finally the law clearly requires revising and edrafting throughout, with a view to the elimination of the eccentric and antastic terminology above commented on, and the correction of numerous rrors in drafting.

Such are the suggestions which the present writer ventures to put orward as indicated by the experience of sixteen years of the operation of measure admirable in its general conception, unfortunate in the details of ts execution, but destined, it is to be hoped, ultimately to assume a form vhich shall be creditable to British jurisprudence.

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REVIEW OF LEGISLATION, 1910.

INTRODUCTION.

[*Contributed by* SIR COURTENAY ILBERT, G.C.B., K.C.S.I., C.I.E.]

THE object of this introductory note is to direct attention to a few among the more interesting features of the world's legislation in 1910.

The assassination of the late prime minister of Egypt led to an amendment of the Egyptian Penal Code. The amending Act includes a new chapter on criminal conspiracy, and a new article making editors and publishers of newspapers responsible criminally for their contents, without regard to the proof of guilty knowledge.

France passed a Truck Act and an Old Age Pension Act. The pension fund is derived from contributions made by the pensioner, the employer, and the State, and the pension begins normally at the age of sixty-five.

Germany amended its copyright law in accordance with some, but not all, of the modifications of the Berne Convention which were adopted at the Berlin Conference of 1908. The German legislature granted protection against mechanical reproductions by means of perforated musical rolls, cinematographs and phonographs, but declined to extend the period of protection to the length allowed by the English Copyright Act of 1911. Another German Act placed the production and sale of nitrate of potash under State control. A newly constituted Board has power to fix in each year the quantity which may be brought into the market and the proportion in which each mine-owner may participate in the sale. The Act fixes a maximum price at which nitrate of potash may be sold.

A third German law was aimed at abuses in the business of agencies for the employment of servants and workmen. A licence is required for the conduct of the business, and may be withheld either on personal grounds or on the ground that the establishment is not required in the particular locality. The licence-holder is debarred from carrying on certain forms of business, such as that of a publican, a lodging-house keeper, or a money-lender.

The United States Congress made a first attempt to control expenditure and prevent corruption in Federal elections, by requiring all political parties having organisations for the purpose of influencing the elections of members of Congress to keep accounts of their receipts and payments, and to file with the clerk of the House of Representatives sworn statements showing the names and addresses of persons and bodies from whom they have received or been promised contributions.

Some curious experiments are, as usual, to be found in the legislation of the several States. New Jersey, following in the wake of Indiana, Connecticut, and California, passed a law for the sterilisation of degenerates. The tobacco planters of Kentucky, roused to wrath by the tyranny of the Tobacco Trust, passed over the head of their Governor a strange Act, which is obviously aimed against monopoly, but the precise effect of which is not easy to understand. Virginia made it a misdemeanour to swear over the telephone or to abuse a person, or his female relatives, in such a way as to lead to a breach of the peace. The laws of several States show the influence of trade unionism and the growing tendency to establish the commission form of government for cities and towns. New Jersey set up an æsthetic municipal commission.

The Parliament at Westminster passed the belated Finance Act which had been rejected by the House of Lords in the previous year, and, after the death of King Edward, granted a civil list to his successor and relieved the declaration of Protestantism which had to be made by him from its offensive features. It also accomplished a much-needed and uncontentious piece of work by consolidating the tangled group of Licensing Acts.

In India the most important enactment of the year was the new Press Act.

The important article of rubber was made the subject of special legislation in the Straits Settlements. A licence is required for buying and dealing with rubber, and may be refused to the agent of persons attempting to control the output of the rubber market.

Wei-hai-wei, which was intended to be a naval port, but has now become a watering-place, has for some time boasted of legislation of its own which has been overlooked in previous reviews. Constitutionally, Wei-hai-wei occupies a position similar to that of Cyprus. It is neither a British possession nor a protectorate, but is a territory held on lease and governed by a British Commissioner with legislative powers.

The Australian Acts of 1910 are of great interest and importance. The constitution was amended by enabling the Commonwealth to take over State debts incurred since its establishment. The Australian Notes Act substituted federal bank notes for state notes. The Surplus Revenue Act extended the powers of the Commonwealth over the expenditure of its customs and excise revenue, and regulated, for a period of ten years, the payment of surplus revenues by the Commonwealth to the several States. A new Conciliation and Arbitration Act made the definition of matters coming within the jurisdiction of the Commonwealth Conciliation Court more elastic, extended the jurisdiction of the court to domestic servants and agricultural pursuits, enabled the president of the court to summon an open conference whenever he thought it necessary in the interests of industrial peace, and altered the provisions of the previous Acts as to the grant of a minimum wage and preference to unionists.

Important amendments were made in the Australian Industries'

Preservation Act. The new Act is aimed against monopolies, and makes it an offence to enter into a contract in restraint of trade or commerce, or to the destruction or injury of any Australian industry, without proof of intent.

The new Sugar Bounty Act enabled the bounty to be withheld if the rates of wages and conditions of employment are below the standard fixed by an industrial authority, or the standard of the locality, or have been declared to be not fair and reasonable.

The Defence Act and the Naval Defence Act regulated the conditions of training for and service in the citizen force, and the relations between the naval service of the Commonwealth and the King's general naval forces.

Another Act provided for carrying out the terms on which the Northern Territory was transferred from the State of South Australia to the Commonwealth. The territory will be under an administration appointed by the Governor-General of the Commonwealth. By the Seat of Government (Administration) Act similar provisions were made for administering the territory acquired from New South Wales for the new seat of the Commonwealth government. These provisions bear some resemblance to those made by the United States legislature for the district of Columbia, which includes Washington.

The Land Tax Act is of great interest to investors in Australian land. It imposes a progressive land tax upon the taxable value of all land in the Commonwealth. The tax is upon unimproved land values; the taxable value in the case of an absentee owner being the aggregate unimproved value of the land owned by him, and in the case of a resident that aggregate unimproved value less a deduction of £5,000; and there are elaborate scales of taxes for the two classes respectively. The Act is believed to be the first instance of a progressive tax which, instead of progressing by steps at arbitrary amounts, progresses by infinitesimal gradations according to a mathematical formula.

Two new Acts amended the regulations with respect to immigration into and emigration from the Commonwealth.

There is much that is interesting in the legislation of the several States.

New South Wales passed an Act introducing the principle of second ballot into elections.

Queensland passed a Redistribution Act. There are to be seventy-two single-member electoral districts, each containing approximately one seventy-second part of the electors on the electoral roll, but the Commissioners for carrying out the Act are, in the districts, to keep in view community or diversity of interests, means of communication, physical features, and the presence or absence of a city or town. South Australia passed an Act providing for a referendum on the question "Are you in favour of increasing the payment of members of Parliament to £300 per annum?" An electoral Act of Victoria provided for a residential enrolment after six months' residence in Victoria and one month's residence in an electoral district. It included also a property qualification subject to safeguards against plural voting. The Act continued previous provisions for voting by post in special cases. Both Queensland and Victoria armed royal commissions with the power of requiring the attendance of witnesses and production of papers. Acts for the further encouragement of "closer settlement"—a name corresponding in some respects to that of the policy in favour of small holdings in the United Kingdom—were passed by New South Wales and South Australia, and the latter State authorised the advance on easy terms of money for the erection or purchase of dwelling-houses. Victoria passed an important Education Act, making attendance at schools compulsory to thirteen, and, in the absence of a "merit certificate," to fourteen, and providing for the education of pupils after the age of fourteen. West Australia passed a Liquor Licensing Act introducing popular control by means of local option votes. There was to be a time limit, but no compensation for deprival of a licence. Provisions for compensation appeared in the Bill as first introduced, but disappeared during its passage through the legislature.

The New Zealand Act of 1910 for the suppression of indecent literature may be studied with advantage by those who are interested in the measure which the English Home Secretary has promised on the same subject. Among other important New Zealand laws of the same year were the law against commercial trusts and monopolies, the law establishing a national provident fund, and the amendment of the licensing law. The object of the national provident fund is to make provision for old age and sickness and for the maintenance of widows and orphans. The contributions to the fund are voluntary, its solvency is guaranteed by the Government, and it receives an annual Government subsidy. The new licensing law alters the questions which were previously submitted to electors at a licensing poll. The question whether licences should be reduced is omitted. The question whether there should be national as distinguished from local prohibition is added.

The South African legislation includes some important Education laws for the Orange River Colony and the Transvaal and several proclamations of the High Commissioner having the force of law for the Protectorates.

West and Central Africa are responsible for a large number of ordinances on a great variety of subjects. One of them imposes a fine on the occupier when mosquito larvæ are discovered in water on his premises. Another, for Uganda, fixes the licence fee for shooting elephants.

In the Dominion of Canada the extension of the functions of the Dominion Government is illustrated by the creation of a new department for external affairs and a new department for labour, with a minister of labour at its head. Saskatchewan also found it necessary to attach a bureau of labour to its department of agriculture. British Columbia passed comprehensive company and liquor laws.

FOREIGN.

1. EGYPT.

[*Contributed by* W. E. BRUNYATE, ESQ., C.M.G., *Khedivial Counsellor.*]

Laws of general public interest—41.

Advocates.—Law No. 9^{bis} permits the unqualified advocates who at the time at which regulations were made for the Bar were admitted to plead before the several central tribunals to plead before all central tribunals and to wear an advocate's robe.

Agriculture.—Law No. 34 creates a Department of Agriculture without attempting to define its duties. Law No. 9 lowers the minimum age at which the agricultural population is liable to cotton-worm *corvée* from ten to nine, and raises the maximum age from eighteen to twenty-five.

Alexandria Port.—Law No. 7 extends the limits of the port, and prescribes that the day shall for the purposes of mooring dues run from midnight to midnight instead of from midday to midday.

Civil Procedure.—Law No. 3 provides that all cases coming before a central tribunal, whether in first instance or on appeal, must be presented to a single judge sitting in chambers, whose duty it is to see that the case is ready for trial before it is sent to a full Court. Amongst specific powers given to the judge in chambers are those of giving judgment by default and of ordering the joinder of cases. He may, with the consent of the parties, hear witnesses, give interlocutory judgments, decide on preliminary exceptions, and appoint experts. Adjournments which might have been obtained before the judge in chambers are only to be allowed by the full Court under penalty of fine, the whole or part of which may be awarded as damages to the opposing party.

Civil Service.—Law No. 29 modifies the Civil Pension Law of 1909 (Law No. 5) in various respects. In particular it raises the part of a Minister's salary which is liable to deduction for pension to £E2,400, raises the maximum pension of a Minister to £E1,200, and extends the age to which a public servant may be retained in the service to seventy.

Criminal Law.—Law No. 28, passed shortly after the assassination of the late Prime Minister, amends the Penal Code of 1904. A new chapter on "Criminal Conspiracy" defines a criminal conspiracy on the lines of the

Indian definition of abetment not followed by the commission of the offence, while the penalties appear to be based upon French and other continental laws. Power is given to tribunals to forbid the publication of reports of their proceedings in the interest of public order. A new article renders the editors and publishers of newspapers responsible criminally for their contents, regardless of the proof of guilty knowledge. Finally threats, unaccompanied by an attempt to extort money, which escaped punishment under the Code of 1904, are dealt with.

Criminal Procedure.—Law No. 27 renders press offences triable by Assize Courts, the ordinary procedure before a summary judge being, however, followed instead of the usual procedure before an Assize Court.

Education.—Law No. 5 provides that school regulations shall be submitted to the Legislative Council in the form of Laws. Law No. 11 publishes such regulations for the Normal School for Teachers in vernacular schools; Law No. 30 provides for discipline in primary and secondary schools; Law No. 35 modifies the title of the Department of Technical and Commercial Education.

Finance.—Law No. 38 is the annual Budget.

Justice.—Law No. 6 abolishes the Special Tribunal in the outlying district of El Arish, a Summary Tribunal of the ordinary type being *ipso facto* substituted.

Local Government.—Law No. 33 creates a Mixed Municipality of the ordinary type for the town of Mehalla El Kobra.

Mehkemehs.—Law No. 31, which deals with procedure, completes the reorganisation of the Mehkemehs referred to in last year's summary. The procedure laid down corresponds closely with that before the Native Tribunals; but such provisions as that in giving evidence it shall not be essential to use the words "I depose," or, again, that the good character of a witness shall not require to be vouched a second time before the same tribunal within six months, serve to recall the archaic nature of the procedure which it is intended to replace. Judgments for alimony are rendered enforceable by imprisonment, such imprisonment not to exceed thirty days. The execution of judgments is left to be regulated by rules made by the Minister of Justice, who is also given power to make regulations for marriage registrars.

Military Service.—By Law No. 1 the Commission created by Law No. 6 of 1908 to prepare a census of Beduins for the purpose of exemption from military service is replaced by separate Commissions sitting in the different Mudirias, each of which is to be composed of three military officers together with three Beduin Omdas.

Mixed Tribunals.—Law No. 2 prolongs the Mixed Tribunals for a further period of five years; Law No. 4 reduces the fees on protests of bills of exchange of a less value than £E10; Law No. 10, also modifying the Mixed Tariff, enables respondents to set down cases for trial at the cost of the appellant; and Law No. 39 repeals the provisions under which all documents

before the Mixed Courts were required to be on stamped paper, substituting new stamp duties in place thereof.

Posts.—Law No. 26 reduces the postal rates on printed matter and on samples.

Taxation.—By Laws Nos. 12 to 25, 36 and 40, advantage is taken of the power conferred upon Provincial Councils by Law No. 22 of 1909 to impose local taxation. In almost all cases the taxation takes the form of a grant of an additional 5 per cent. on the land revenue for a period of three years; it has, in fact, been applied in all cases to education. Law No. 37 provides that slaughter-house dues in the towns possessing Municipalities shall be fixed by those Municipalities. Law No. 8 modifies the limits of the town of Menouf for the purposes of house-tax.

Wakfs.—Law No. 32 modifies the composition of the Supreme Board of the Wakf Administration.

2. FRANCE.

[*Contribué par* M. C. SANSAS, *Docteur en Droit*, *Membre de la Société de Législation comparée.*]

Le Parlement a ouvert sa session ordinaire le 11 janvier 1910. La Chambre des Députés, dont les pouvoirs devaient expirer au mois d'avril suivant, tenait à laisser un testament politique qui la sauvât de l'oubli. Avec le concours du Sénat elle y a réussi.

Voici l'analyse des principales résolutions devenues définitives :

Loi du 18 février 1910 (publiée dans le *Journal officiel* du 20 février 1910).—L'article premier de la loi du 5 novembre 1894 est modifié en ce sens que des sociétés de crédit agricole peuvent être constituées soit par la totalité ou par une partie des membres d'un ou plusieurs syndicats professionnels agricoles, soit par la totalité ou par une partie des membres d'une ou plusieurs sociétés d'assurances mutuelles agricoles régies par la loi du 4 juillet 1900. Elles ont exclusivement pour objet de faciliter et même de garantir les opérations concernant la production agricole effectuées par ces syndicats et ces sociétés.

Loi du 26 février 1910 (publiée dans le *Journal officiel* du 28 février 1910).—L'art. 5 du Code d'Instruction criminelle est modifié ainsi qu'il suit : Tout Français qui, hors du territoire de la France, s'est rendu coupable d'un crime puni par la loi française peut être poursuivi et jugé en France. Tout Français qui, hors du territoire de la France, s'est rendu coupable d'un fait qualifié délit par la loi française peut être poursuivi et jugé en France si le fait est puni par la législation du pays où il a été commis. Il en sera de même si l'inculpé n'a acquis la nationalité française qu'après l'accomplissement du crime ou du délit.

Loi du 9 mars 1910 (publiée dans le *Journal officiel* du 10 mars 1910).—La caisse nationale d'assurance en cas de décès est autorisée à consentir par contrat et sur la tête de personnes âgées de plus de trois ans des assurances de capital différé d'une durée d'au moins cinq années ayant pour but le paiement en cas de vie de l'assuré à une année d'âge accomplie fixée au plus tard à 65 ans d'une somme de 5,000 francs au maximum. Ces assurances ne peuvent se cumuler avec les assurances mixtes pratiquées par la caisse nationale que jusqu'à concurrence de cette somme. Les autres dispositions de la loi sont relatives à l'organisation de ces assurances.

Loi du 19 mars 1910 (publiée dans le *Journal officiel* du 20 mars 1910).—Elle a pour objet de favoriser l'acquisition, l'amélioration et la reconstitution des petites exploitations rurales par les cultivateurs en autorisant les sociétés de crédit agricole à consentir des prêts à long terme ne pouvant dépasser la somme de 8,000 francs, ni excéder une durée de 19 ans.

Loi du 25 mars 1910 (publiée dans le *Journal officiel* du 27 mars 1910).—Il est interdit à tout employeur: 1° d'annexer à son établissement un économat où il vende directement ou indirectement à ses ouvriers et employés ou à leurs familles des denrées et marchandises de quelque nature que ce soit, 2° d'imposer à ses ouvriers et employés l'obligation de dépenser leur salaire en totalité ou en partie dans les magasins indiqués par lui. Cette interdiction ne s'étend pas au contrat de travail qui peut stipuler le logement et la nourriture en plus du salaire ou la cession de fournitures au prix coûtant. Tout économat sera supprimé dans un délai de deux ans. Exception est faite pour les économats des chemins de fer contrôlés par l'Etat sous la condition : 1° que le personnel ne soit pas obligé de se fournir à l'économat, 2° que la vente ne rapporte aucun bénéfice à l'employeur, 3° que l'économat soit géré sous le contrôle d'une commission composée pour un tiers au moins de délégués élus par les employés du réseau.

Loi du 29 mars 1910 (publiée dans le *Journal officiel* du 30 mars 1910).—Revision du Tarif général des Douanes et élévation des droits d'entrée dans une large mesure.

Loi du 5 avril 1910 (publiée dans le *Journal officiel* du 6 avril 1910).—Elle organise les retraites ouvrières et paysannes et réalise ainsi une réforme promise depuis longtemps par les hommes politiques au pouvoir. Elle comprend 35 articles très développés divisés en six titres. Les deux premiers se réfèrent à la constitution des retraites et aux retraites assurées par les sociétés de secours mutuels, les caisses départementales ou régionales, les caisses patronales ou syndicales, les syndicats de garantie et les syndicats professionnels. Le titre 3 contient des dispositions générales ; le titre 4, des dispositions transitoires ; le titre 5 vise les retraites des métayers, fermiers, cultivateurs, artisans et petits patrons ; le titre 6 est consacré à des dispositions diverses.

Nous ne pouvons ici qu'indiquer les points essentiels. Peuvent bénéficier d'une retraite de vieillesse les salariés des deux sexes de l'industrie, du commerce, des professions libérales et de l'agriculture, les serviteurs à gages, les salariés de l'Etat qui ne sont pas placés sous le régime des pensions civiles ou des pensions militaires, les salariés des départements et des communes. La retraite est constituée par des versements obligatoires et facultatifs des assurés, des contributions des employeurs, des allocations viagères de l'Etat. Les versements *obligatoires* des salariés et les contributions des employeurs sont établis ainsi: 9 francs par an pour les hommes, 6 francs pour les femmes, 4 francs 50 centimes pour les mineurs au-dessous de 18 ans. La contribution de l'employeur reste exclusivement à sa charge. Les versements des salariés sont prélevés sur le salaire par l'employeur lors de chaque paye. Pour les salariés intermittents, les versements obligatoires seront effectués sur la base des versements mensuels dans les conditions à déterminer par un règlement d'administration publique.

L'allocation viagère de l'Etat est fixée à 60 francs à l'âge de 65 ans. Pour en bénéficier l'assuré doit justifier qu'il a effectué au moins trente versements annuels atteignant le chiffre fixé par la loi. Si le nombre des années de versement est inférieur à trente et supérieur à quinze, l'allocation est calculée d'après le nombre des années multiplié par 1 franc 50 centimes. Les deux années de service militaire obligatoire entrent en ligne de compte.

L'âge normal de la retraite est de 65 ans. L'assuré peut à partir de 55 ans demander une liquidation anticipée de sa retraite. Dans ce cas l'allocation accordée par l'Etat sera réduite en conséquence. Si l'assuré meurt avant d'avoir une pension, il est alloué une indemnité soit à ses enfants, de moins de 16 ans, soit à sa veuve sans enfants de moins de 16 ans. La femme divorcée et non remariée est assimilée à la veuve, si le divorce a été prononcé aux torts exclusifs du mari.

Les assurés qui, en dehors des cas prévus par la loi sur les accidents du travail, sont, à la suite de blessures ou d'infirmités prématurées, atteints d'une incapacité permanente et absolue de travail, ont droit, quel que soit leur âge, à la liquidation anticipée de leur retraite.

Sont assujettis à la loi les salariés qui reçoivent une rémunération n'excédant pas 3,000 francs par an. Les personnes déjà âgées au moment de la mise en application de la loi jouissent d'un traitement de faveur.

Les salariés étrangers travaillant en France sont soumis au même régime que les salariés français, mais ils ne bénéficient des contributions patronales et des allocations budgétaires que si des traités avec les pays d'origine garantissent aux Français des avantages équivalents.

Nous terminerons cet aperçu très-incomplet par quelques chiffres extraits d'un tableau dressé par M. Maurice Bellom, Ingénieur en chef au Corps des Mines.[1] L'assuré âgé actuellement de 64 ans touchera dans un an une retraite de 102 francs 6 centimes; l'assuré de 40 ans touchera dans 25 ans une retraite de 160 francs 58 centimes; l'assuré de 20 ans touchera dans 45 ans une retraite de 330 francs 7 centimes.

La nouvelle Chambre des Députés a été élue les 24 avril et 3 mai 1910, elle a siégé du 1er juin au 12 juillet et du 25 octobre au 24 décembre 1910.

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[1] *Annuaire de Législation française*, année 1911, p. 102.

Après avoir vérifié les pouvoirs de ses membres, elle a consacré son temps à harceler les ministres d'interpellations. Sur ces débats un peu bruyants les avis sont partagés. Les uns y voient un fâcheux présage, tandis que les autres se montrent satisfaits, des discours étant moins dangereux que des lois.

3. GERMANY.

[*Contributed by* ERNEST J. SCHUSTER, ESQ., LL.D.]

General Observations.—The year 1910 was not a fruitful year as regards actual legislation, but the preparation for the several projects mentioned in my last report made good progress. The consolidation of the statutes relating to Workmen's Insurance was completed in 1911 by the enactment of the Imperial Insurance Act (Reichsversicherungsordnung), and an introductory statute (Einführungsgesetz). Another statute dealing with the compulsory insurance of commercial clerks was passed in the same year. These two statutes will form the subject of a separate article. The enactments referred to below are the most important ones passed in 1910.

Copyright Amendment Act.—This statute was passed to give effect to the modifications of the Berne Convention adopted at the Berlin Conference of 1908. The extension of the period of protection determined upon at that Conference, and carried out by the British Copyright Act, 1911, did not find favour with the German Legislature.

Among the innovations which the German statute introduces, the following are of special importance: (1) Musical works are protected against reproduction on perforated rolls or similar appliances intended to be used on mechanical piano-players, but where a licence to reproduce a musical work in this manner has been granted to one person, any other person may compel the author to grant him a similar licence on payment of adequate royalties. (2) The contents of literary works are protected against reproduction by means of cinematographs or other similar contrivances. (3) Choreographic and pantomimic works, which hitherto were only protected in so far as they were performed in accordance with written or printed directions, are now equally protected if the directions are recorded in some other form (*e.g.* by cinematograph films). (4) The authorised reproduction of a literary or of a musical work by means of a phonograph or of any other similar appliance is protected in the same way as any other authorised reproduction.

A comparison of the present German and British Copyright Laws shows that many important differences continue to exist.

Statute relating to the Liability of the Imperial Exchequer for breaches of duty on the part of Imperial Officials.—It is provided by s. 839 of the German Civil Code that any public official who wilfully or negligently commits any breach of duty to the detriment of any third party is (subject to certain qualifications) liable to indemnify such third party in respect of such detriment. The above-mentioned statute, as regards officials in the Imperial service, substitutes the Imperial Exchequer for the official by whom the breach of duty was committed, and enlarges the right of the injured party by enacting that even in a case where the official would be excused from responsibility on the ground of the breach of duty having been committed under the influence of mental disease, the Imperial Exchequer is liable in so far as equity requires the injured party to be indemnified.

Statute relating to the Production of Nitrate of Potash.—This statute is interesting from an economic point of view inasmuch as it interferes with the right of a certain class of mineowners (viz. the owners of mines producing nitrate of potash) to sell their products in accordance with their own discretion.

A newly constituted Board consisting of a President and two members appointed by the Imperial authorities and four members elected by the mineowners has in each year to fix the total quantity which is to be brought into the market in Germany and abroad, and the proportion in which each mineowner may participate in the sales. The decisions of this Board are subject to appeal to an Appeal Commission consisting of five members appointed by the Imperial authorities.

The maximum prices at which nitrate of potash may be sold in Germany are fixed by statute, and may from time to time be altered by the Federal Council, but any increase of a maximum price requires the consent of the Reichstag. Any mineowner whose sales exceed the prescribed quantity has to pay a special tax in respect of the excess.

Statute relating to Agents procuring situations for Servants and Workmen.—This statute is intended to prevent, or at least diminish, certain well-known abuses. Under its provisions a licence is required by any person acting as intermediary between intending employers and intending employees, and such licence may be refused either on personal grounds or on the ground that in the particular locality there is no need for the establishment of any agency for the above-mentioned purposes. A licence-holder is not permitted to carry on any of the following trades: the trade of a publican or retailer of intoxicating drink, the letting of lodgings or beds, the trade of a dealer in articles of clothing or of food, or in lottery tickets, or of a barber or hair-cutter, or of a money-changer or pawnbroker. The fees of licensed agents for the above-mentioned purposes are fixed in a prescribed manner, and any stipulation by which an advantage, other than the payment of a fee, is promised to the agent, is void, nor is it permitted to the agent to require a fee in any case in which no agreement is arrived at between the intending employer and the intending employee. An agent who procures places in foreign countries for females is bound from time to time to send lists of such females' names to the competent police authority with details as to the nature of the employment procured in each case. A copy of the statute has to be posted in the sailors' cabin in every German merchant vessel.

4. UNITED STATES OF AMERICA—FEDERAL AND STATE LEGISLATION.

[*Contributed by* R. NEWTON CRANE, ESQ., *of the Middle Temple.*]

Any summary of legislation in the United States would be incomplete which did not embrace material changes in the Federal laws, as these affect the welfare of the citizens of all the States. The subjects dealt with by the United States Congress are necessarily limited in number, as the several States have complete authority over their respective citizens, and there are therefore left to the Federal government only matters which relate, generally speaking, to foreign affairs, external commerce, and interstate trade and communication.

White Slave Traffic.—The Immigration Act of 1907 was amended, March 26, 1910, to enlarge the scope of the provisions relating to the White Slave traffic. Under the Act prostitutes or women or girls coming into the United States for the purpose of prostitution, or for any other immoral purpose, were denied admission. By the Act as now amended, any alien who shall be found an inmate of or connected with the management of a house of prostitution or practising prostitution, after such alien shall have entered the United States, or who shall receive any benefit from any part of the earnings of any prostitute, or who is employed by, or connected with, any house of prostitution or music or other hall where prostitutes resort, or which they habitually frequent, shall be deemed to be unlawfully within the United States and shall be deported. This deportation may be made at any time within three years aften the alien has been first admitted.

Immigration.—The classes, other than those referred to in the previous paragraph, now excluded from admission to the United States are:

> All idiots, imbeciles, feeble-minded persons, epileptics, insane persons, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanour involving moral turpitude; polygamists, or persons who admit their belief in the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all government, or of all formsof law, or the assassination of public officials.

The Act requires the master of the vessel bringing an alien into the United States to furnish to the immigration officer of the port certain information as to the character, antecedents, and position of the alien, and, *inter alia*, "whether in possession of $50, and, if less, how much."

It is noteworthy that the returns for the American fiscal year 1910 show that 1,041 English, 592 Irish, and 410 Scotch immigrants were debarred from landing, out of a total of 96,676 from Great Britain. These 96,676 immigrants took $5,671,611 into the United States, contributed as follows: English, $2,966,225; Irish, $1,476,480; Scotch, $1,237,906.

Creation of a Commerce Court.—By an Act passed June 18, 1910, a new Court, to be known as the "Commerce Court," was created. It is a Court of record, composed of five judges from the United States circuit judges, designated by the Chief Justice. The Court is to hold its sessions in Washington, but it may sit elsewhere if found desirable, and is to be permanently open. The President is authorised to appoint five additional circuit judges, in order to provide a sufficient number of judges out of which to constitute the Commerce Court. The new Court will have jurisdiction in all cases for the enforcement of any order of the Interstate Commerce Commission, and, generally, of all matters relating to or connected with the commerce of the United States.

Publicity of Political Contributions.—The Act of June 25, 1910, is the first attempt in America to control expenditures and prevent corruption at Federal elections. The Act provides that all political parties, which have organisations for the purpose of influencing the elections of members of Congress, shall have a chairman and a treasurer, and that it shall be the duty of the latter to keep a detailed and exact account of all money, or its equivalent, received by or promised to the committee, and the name of every person, firm, association, or committee from whom received, and of all expenditures, disbursements, and promises of payment made by the committee or any member thereof. All payments, exceeding $10, made by a political committee shall be evidenced by vouchers, stating the particulars of the expense, which vouchers must be preserved for fifteen months after the election. Within thirty days after the election the treasurer of the committee must file with the clerk of the House of Representatives at Washington a sworn itemised statement setting forth the name and address of each person, firm, association, or committee who contributed, promised, lent, or advanced money to the committee, and the amount thereof. Every person, firm, association, or committee, other than political, that shall expend or promise any money or other thing of value, amounting to $50 or more, for the purpose of influencing or controlling the election of a member of Congress, must file a similar sworn statement of the amount so expended. The penalty for violation of the Act is a fine of not more than $1,000 or imprisonment for not more than one year.

State Legislation.—During the twelve months prior to August 1, 1910, the only States in which there were regular sessions of the legislature were

Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Jersey, New York, Ohio, Rhode Island, South Carolina, and Virginia. There were special sessions for specific purposes in six other States.

The Sterilisation of Degenerates.—The most important of all legislation in the United States during the period under review was enacted by the New Jersey Legislature. On April 21, 1910, the Governor approved an Act entitled "An Act to authorise and provide for the sterilisation of feeble-minded (including idiots, imbeciles, and morons), epileptics, rapists, certain criminals and other defectives." The new law directs the Governor to appoint a surgeon and a neurologist, both of recognised ability, who, in conjunction with the Commissioner of Charities, shall constitute a board of examiners whose duty it shall be to examine into the mental and physical condition of the feeble-minded, epileptics, those convicted of rape, or of a succession of criminal offences, and other defective inmates confined in the reformatories, charitable and penal institutions of the State. If the examiners and the chief physician of any institution in which such defectives are confined unanimously find that procreation by any inmate is inadvisable and that there is no probability that the condition of such inmate will improve in this respect, it shall be lawful to perform such an operation for the prevention of procreation as the examiners may deem fit. Prior to the examination the board of examiners shall apply to a judge of common pleas for the assignment of counsel to represent the inmate to be examined, and no order made by the board shall become effective until five days after the order shall have been filed with the clerk of the Court, and a copy thereof shall have been served upon the counsel appointed to represent the inmate. All such orders shall be subject to review by the Supreme Court, and an appeal shall operate as a stay until the judgment of the appellate Court is rendered. The Court shall fix the compensation allowed to counsel, and such compensation shall be paid as other Court expenses. The record taken upon the examination shall be preserved in the institution where the inmate is confined, and one year after the operation has been performed the superintendent shall report to the board of examiners the condition of the inmate and the effect upon him of the operation.

Similar laws with respect to sterilisation have been passed in Indiana, Connecticut, and California.

Tobacco Anti-Trust Laws.—The Tobacco Trust, which has recently been dissolved as a result of the Federal Government's prosecutions, aroused great resentment among the tobacco growers of the Southern States. It was claimed that the Trust dominated the market to such an extent that there was no competition, and that therefore the growers had either to sell their crops to the Trust at prices settled by the Trust, or let it be ungathered in the fields. Riots resulted, and tobacco store-houses with their contents were burned, in the hope of attracting attention to the situation and procuring legislative redress. In this the planters have been so far successful that a remarkable Act, unique probably in the history of legislation, has been passed by the Kentucky legislature.

The Act provides that it shall be lawful for any person or corporation to whom or to which any article of farm products has been pooled or pledged, for any purpose, to record a list of the persons pooling or pledging the same, together with a general description of the land upon which the same was grown or proposed to be grown, in the office of the clerk of the County Court of the county in which the land is situated. Such record shall have the same effect as to creditors or purchasers as the recording of a chattel mortgage. Any person buying or soliciting pooled or pledged property, so recorded, shall upon conviction be fined not less than $10 nor more than $1,000, or imprisoned not less than fifteen nor more than ninety days, or be both fined and imprisoned. The Governor of the State refused to sign the bill, which was passed notwithstanding his objections.

Prevention of Disease in Cattle.—In Virginia and Kentucky, where hog cholera has resulted in heavy loss to the farmers, preventative serum is provided by the State, and another Act requires the inspection and testing of cattle suspected to be suffering from cattle diseases, and especially tuberculosis, and the destruction of the animals if the suspicions are verified. In both States the examination can be made only at the owners' request, but in Kentucky the owner who does not report his suspicions is subject upon conviction to a heavy penalty. In Maryland the sale of tuberculin and mallein for testing diseased cattle, and of vaccine for glanders, was regulated, and penalties were imposed for selling tuberculous cattle.

Crimes and Penalties.—It was made a misdemeanour in Virginia to swear over the telephone or to abuse a person, or his female relatives, in such a way as to lead to a breach of the peace. It was also made a larceny to refuse within twenty-four hours to pay for or surrender goods received on the collect-on-delivery system. Ohio, following the lead of Illinois, in the effort to put a stop to "lynching," authorised the Governor of the State to remove any sheriff who shall permit a mob to take a prisoner from his custody. Prison-made goods in Massachusetts may be sold only to public institutions, instead of in an open market—this in compliance with the demands of the trade unionists. In Oklahoma such goods must be labelled so as to identify the source of manufacture.

The agitation, so prevalent a few years ago, for the abolition of the death penalty has apparently spent itself, for no Legislature has passed a law to this effect in 1910. Kentucky, however, substituted the electric chair for the rope.

Child Labour.—In New York no minor under sixteen is permitted to work in any mercantile establishment, office, hotel, or as a messenger, more than fifty-four hours a week, nine hours a day, or between 7 p.m. and 8 a.m. No female between sixteen and twenty-one is permitted to work more than sixty hours a week or ten hours a day, except during the week before Christmas.

At least forty-five minutes must be allowed for the noon meal, and no girl under sixteen is permitted to work in any place where she must stand constantly. Similar Acts were passed in New Jersey, Kentucky, Rhode Island, and Maryland.

Support of Children.—Virginia made it a misdemeanour for parents or guardians to refuse to support children under fourteen. Kentucky went further, and punishes any person who directly promotes or contributes to conditions which render any child dependent, neglected, or delinquent, and ordered that the Act shall be liberally construed in favour of the State, to protect from neglect or parental duty, even though the person at fault be no relative of the child.

Employers' Liability and Workmen's Compensation.—Commissions were appointed in Illinois, Ohio, Massachusetts, and New Jersey to investigate these subjects and suggest legislation upon them. In New York, in certain circumstances, the employer, except for accidents caused by the employee's wilful conduct, is to pay in compensation for any injury resulting in the workman's death a sum equivalent to 1,200 times his daily wage, if the workman leaves a dependent widow or child, or a proportion thereof in certain cases, but in no case shall the maximum amount exceed $3,000. When the injury does not result in death, but total or partial incapacity, the employer may be required to make weekly payments of not more than 50 per cent. of the workman's full-time weekly wage.

Old Age Pensions.—New Jersey appointed a commission to investigate the subject of old age pensions and to report with reference to legislation.

Tuberculosis is receiving increasing attention. In New Jersey it is declared an infectious disease. Physicians' reports, examination of sputum, disinfection of premises and care of the patient, before and after death, are required. Mississippi and Virginia require practising physicians, under penalty of a fine of $10, to report all cases to enable the State Board of Health to send the patient proper instructions for his treatment and to prevent contagion. Ohio authorises special elementary schools for tuberculous children. Massachusetts provides for tuberculosis exhibits in the public schools.

Trade Union Legislation.—Maryland, at the instance of trade unionists, requires the public printer to affix the union label to all State printing. Massachusetts requires those who advertise for new workmen during a strike or lock-out to specify the conditions that exist, and Kentucky establishes an eight-hour day for all labourers and mechanics employed on public works undertaken by the State or by a contractor on its behalf.

Commission Government of Cities and Towns.—The distrust of political municipal government has led to an extension of the measures for taking away from political "bosses" as much as possible of their power. The Illinois Legislature authorises any city, town, or village (except Chicago) to establish the commission form of government. Upon the petition of 10 per cent. of the voters the question may be submitted to the people. If rejected, it cannot be raised again for two years. The plan, if adopted, requires the election of a mayor and four commissioners on a general ticket, without party designations, for a term of four years, from ten candidates previously selected at a general primary election. Each commissioner is the head of an executive department, and the four commissioners, acting with the mayor, have the right to appoint and remove minor officials not embraced within the civil service rules. The Act embraces the initiative, the referendum, and the recall. Virginia submitted a constitutional amendment permitting the Legislature to change the form of municipal government, subject to the approval of the municipality affected. Massachusetts permitted the city of Lynn to adopt a new charter providing for a mayor and eleven councilmen, four of them to be chosen at large, and all to be elected upon ballots which shall bear no party designation.

An Æsthetic Municipal Commission.—A novel New Jersey Act permits towns to create a town-plan and art commission of seven members, to whom all questions of public improvements shall be submitted, and whose decision shall be final unless changed by a two-thirds vote of the town council. The commissioners may submit comprehensive plans of town improvements to the voters, and may reject works of art which are offered as gifts to the municipality.

BRITISH EMPIRE.

I. BRITISH ISLES.

1. UNITED KINGDOM.[1]

Acts passed—Public General, 38; Local and Personal, 145; Private (not printed).[1]

The Government entered upon the work of the Session with the intention not to pass any important measures; and although the death of King Edward entirely changed the political situation, the product of a long Session consists of a number of minor Acts, with the exception of the Finance Act, held over from the previous year, and the Licensing (Consolidation) Act.

Administration of Justice.—The Supreme Court of Judicature Act (c. 12, E.) authorises the appointment of two additional judges to cope with the arrears of work. The addition is not necessarily permanent. Whenever, after August 1, 1911, the whole number of judges of the King's Bench Division amounts to fifteen or upwards, a vacancy shall not be filled unless and until an address is presented from both Houses of Parliament representing that the state of business requires it.

The County Common Juries Act (c. 17, E.) cancels the limitation on the number of men who may be summoned to serve on county common juries.

Ancient Monuments.—By amending the Acts of 1882, 1892, and 1900,[2] the Ancient Monuments Protection Act (c. 3, U.K.) enables the Commissioners of Works to accept the ownership of "any structure, erection, or monument of historic or architectural interest, or any remains thereof."

Animals.—The object of the Diseases of Animals Act (c. 20, E. and S.) is to check the trade in the export of decrepit horses. An inspector appointed by the Board of Agriculture is required to certify that the animal is capable of being conveyed to its destination and disembarked without cruelty. If the inspector is unable to give the certificate he may order the animal to be slaughtered. When a horse is injured in transit the master of the ship has the same power. Inspectors have the right to enter the vessel in order to secure the enforcement of the Act. Thoroughbred horses for racing and breeding are outside its scope.

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[1] This review is based upon the article "Legislation of the Session" published in *The Times*, December 27, 1910.

[2] See *Legislation of the Empire*, vol. i. p. 65.

Army.—The annual Army Act (c. 6, U.K.) contains one important section, which, by increasing the powers of commanding officers, decreases the number of cases to be sent for trial by courts-martial. A commanding officer may now inflict detention for twenty-eight days instead of fourteen as hitherto. The right is reserved to the soldier of claiming to be tried by court-martial.

Census.—Preparations had been in progress for some time before the passing of two Acts for taking a census—one (c. 27) for Great Britain and the other (c. 11) for Ireland—on April 2, 1911. On this occasion additional information is required in respect of the duration of marriage, the number of children born of the marriage, and the number of such children living. The Irish Act, unlike the Act for Great Britain, requires a statement to be made in regard to the religious persuasion.

Children.—The Court of Criminal Appeal in *Rex* v. *Moon*[1] held that "seduction" in the Children Act, 1908, means inducing a girl to surrender her chastity for the first time. The Children Act (1908) Amendment Act (c. 25, U.K.) carries out the original intention by the insertion of the words "unlawful carnal knowledge" in the principal Act.

The Education (Choice of Employment) Act (c. 37, E.) enables local education authorities outside London to give assistance with respect to the choice of employment so that they may work in co-operation with the Labour Exchanges established under the Act of 1909.[2]

Companies.—The object of the Companies (Converted Societies) Act (c. 23, U.K.) is to remove certain doubts as to the validity of the conversion of certain friendly societies into companies.

Crown.—The demise of the Crown necessitated the passing of two Acts. The Regency Act (c. 26, U.K.) is required as a precautionary measure owing to the minority of the heir to the Throne. Queen Mary is appointed Regent until the age of eighteen of any child who succeeds to the Throne. C. 28 (the Civil List Act) makes "provision for the honour and dignity of the Crown and the Royal Family and for the payment of certain allowances and pensions." The King's Civil List is fixed at £470,000, and in the event of his predeceasing the Queen an annuity of £70,000 is assigned to Her Majesty. The revenues of the Duchies of Lancaster and Cornwall are not surrendered in the same way as the hereditary revenues of the Crown, so that it is not necessary for Parliament to make provision for the Prince of Wales. But in the event of his marriage an annuity of £10,000 becomes payable to the Princess, and in the further eventuality of her becoming a widow is increased to £30,000 per annum.

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[1] [1910] 1 K.B. 818.

[2] See *Journal of Comparative Legislation*, N.S. vol. xi. p. 345.

Upon attaining the age of twenty-one each of the King's other sons will receive £10,000 per annum, to which £15,000 per annum will be added upon his marriage; and to the King's daughter is assigned, also at the age of twenty-one, an annual income of £6,000. A third Act, the Accession Declaration Act (c. 29, U.K.), indirectly resulted from the death of King Edward. Public opinion recognised that another Sovereign could not be called upon to make the old offensive Accession Declaration. The Sovereign is now required "solemnly and sincerely in the presence of God" to "profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my power according to law."

Duke of York's School.—The school having been moved to new buildings at Gerston, near Dover, the chapel had been dismantled and was no longer required for use. The Duke of York's School (Chapel) Act (c. 16, E.) allows it to be "freed and discharged from all ecclesiastical uses," and the building to be vested in the Commissioners of Works with a view to its disposal.

Finance.—The first twenty-two sections of the Finance (1909-10) Act (c. 8, U.K.) deal with the duty on land values, which is of four kinds—investment value duty, reversion duty, undeveloped land duty, and mineral rights duty. The underlying theory is that the increased value of land and minerals due to the development of population and industry, especially in urban districts, should be shared by the owner with the State. Increment value duty is payable at the rate of £1 for every £5 of the value (*a*) on the occasion of any transfer on sale of the land or any interest in the land, or on the granting of any lease; (*b*) on the occasion of the death of any person where any interest in the land is comprised in the property passing within the meaning of the Finance Act, 1894; and (*c*) where the land or any interest in the land is held by any body corporate, when the duty will be levied on April 5, 1914, and in every fifteenth year. The increment value is deemed to be the amount by which the stated value of the land on the occasion when the increment duty becomes payable exceeds the site value as ascertained by the valuation under the Act. Reversion duty at the rate of £1 for every £10 is payable on the determination of any lease of land, on the value and the benefit accruing to the lessor by reason of the determination of the lease. The value of the benefit accruing to the lessor is deemed to be the amount by which the total value of the land, at the time when the lease determines, exceeds the capital value of the consideration for which the original grant was leased. Undeveloped land duty is levied at the rate of ½*d.* to every 20*s.* of the site value. Land is undeveloped if it has not been developed by being built upon or being used bona-fide for any business, trade, or industry other than agriculture. The site value of undeveloped land is taken "to be the value adopted as the original site value or, where the site value has been ascertained under any subsequent periodical valuation of the undeveloped land for the time being in force, the site value as so ascertained." Undeveloped land duty is not to be charged in respect of any land where the site value of the land does not exceed £50 per acre. In the case of agricultural land of which the site value exceeds that amount, "undeveloped land duty shall only be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes." Mineral rights duty is payable on the rental value of all rights to work minerals and of all mineral wayleaves at the rate of 1*s*. for every 20*s*. of that rental value. The Commissioners of Inland Revenue are to make a valuation of all land showing separately the total value and the site value, and a quinquennial valuation of undeveloped land duty. Appeals against valuation made by the Commissioners may be referred to one of a panel of referees appointed under the Act. Land held by rating authorities is exempt from duty and also land held for charitable purposes.

The second part of the Act is concerned with the duties on liquor licences and its general effect is to increase the amount of the duty in accordance with a scale set forth in a schedule. A duty is levied upon the annual licence value, defined to be "the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises, the values being calculated on the same basis as that on which the amount to be paid as compensation under s. 2 of the Licensing Act, 1904, is calculated in default of agreement and approval in cases where compensation is payable under that Act, but there shall not be included in the value of the premises as licensed premises any amount on account of depreciation of trade fixtures."

The third part of the Act deals with death duties. The scale is raised. The Inland Revenue Commissioners are empowered to transfer land in satisfaction of estate duty, settlement duty, or succession duty.

Rate of legacy and succession duty under the Stamp Act, 1815,[1] or Succession Duty Act, 1853,[2] are raised from 3 to 5 per cent., and duties formerly at the rate of 5 or 6 per cent. are now fixed at 10 per cent. The period preceding death during which a disposition cannot operate as an immediate gift *inter vivos* is increased from twelve months to three years. The exemption for objects of national, scientific, or historic interest in the Finance Act, 1896,[3] is extended so as to give exemption from legacy and succession duty as well as from estate duty and to include works of artistic interest.

Income tax is the subject of Part IV. A super-tax is imposed on incomes of £5,000 at the rate of 6*d*. for every £1 by which the total income exceeds £3,000. Incomes not exceeding £500 may be relieved from income tax to the extent of the tax equal to the amount upon £10 for every child. The

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[1] 55 Geo. III. c. 184.

[2] 16 & 17 Vict. c. 51.

[3] 59 & 60 Vict. c. 28.

Act extends the relief afforded by the Finance Act, 1894,[1] to the owner of land or houses in respect to maintenance, repairs, insurance, and management.

The stamp duties are raised by Part V., by doubling those specified in the first schedule to the Act of 1891,[2] the duties on leases, and on marketable securities.

Additional duties on spirits and beer are imposed by Part VI. A rate of threepence per gallon is levied on motor spirit, defined to mean "any inflammable hydrocarbon (including any mixture of hydrocarbon and any liquid containing hydrocarbon) which is capable of being used for providing reasonably efficient motive power for a motor-car." The duty is also increased on licences for motor-cars. Part VII. makes provision as to payments to local authorities and to the road improvement account from the amounts raised by these duties.

In the general clauses comprising Part VIII. imprisonment with six months' hard labour without the option of a fine is the punishment for making a false statement or representation in respect to any matter contained in the Act.

Probably no Act of Parliament has formed the material for so many commentaries and attempts to elucidate its provisions, so that a review upon the scale possible in these pages can only give a fragmentary idea of its main features.

Various other financial Acts had to be passed in order to meet the national expenditure. The War Loan (Redemption) Act (c. 2, U.K.) was required to provide for the redemption of the remaining £21,000,000 of War Stock and War Bonds raised under the War Loan Act, 1900. The Consolidated Fund (No. 2) Act (c. 9, U.K.) sets aside a further £500,000 for the obligations incurred under the Old Age Pensions Act. The ordinary Finance Act of the year (c. 35, U.K.) is an abridged measure putting a duty of 5*d.* per lb. on tea and levying the income tax at 1*s.* 2*d.* and the super-tax as in the earlier Finance Act. One important financial statute—East India Loans (Railways and Irrigation) Act (c. 5, U.K.)—concerns India by empowering the Secretary of State in Council of India to raise £25,000,000 for the extension of railways, the construction of irrigation works, and "other purposes." It is anticipated that this sum will be sufficient for the requirements of the next three years. The Public Works Loans Act (c. 21, U.K.) appoints the Commissioners for their quinquennial term and makes the customary provisions.

Licensing.—The long-postponed consolidation of the licensing law in England is completed by the Licensing (Consolidation) Act (c. 24, E.), which repeals the whole of nine statutes, the greater part of two others, and various sections of two more. The opportunity is taken to make some verbal amendments, to correct certain obvious flaws, and to make one alteration of some substance in the definition of the renewal of a licence.

[1] 57 & 58 Vict. c. 30.

[2] 54 & 55 Vict. c. 39.

Mines.—The Mines Accidents (Rescue and Aid) Act (c. 15, U.K.) makes provision with respect to organisation for the purpose of rescue and aid in the case of accidents in mines. The Whitehaven disaster was the immediate cause of the passing of the Act, which enables the Home Secretary to order such provision as he considers to be necessary. An opportunity is to be given for the persons affected to make objection. Disputes are to be decided by a referee agreed upon between the Secretary of State and the objectors, or, in default of agreement, appointed by the Lord Chief Justice.

Police.—The Police (Weekly Rest-Day) Act (c. 13, E.) grants to the police one day's rest off duty in every seven and comes into force as it is adopted by local authorities, but action must have been taken throughout the country within a period of four years.

Miscellaneous.—Small amending Acts form a miscellaneous collection, and deal (c. 7, U.K.) with such details as the increase from five to eight of the number of Development Fund Commissioners appointed under the Act of 1909[1]; amend (c. 19, E.) the law in respect to the right of aldermen to vote in the election of aldermen and mayors; and provide (c. 34 E) compensation to tenants on whom the notice to quit is served with a view to the use of the land for the provision of small holdings.

Isle of Man.—There is the usual annual Customs Act (c. 18) for the Isle of Man.

Scotland.—Five Acts apply only to Scotland, but are all small amendments, of which the subjects are the pensions of the police (c. 10), the investment of trust funds (c. 22), agricultural holdings (c. 30), trial by jury (c. 31), and copies of certificates of births, deaths, and marriages (c. 32).

Ireland.—For Ireland alone there is, besides the Act[2] to authorise the taking of the Census, only one other (c. 33), which removes the restriction requiring all social festivities to end at eleven o'clock on Saturdays in hotels and restaurants in Dublin.

2. THE ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore, *Chief Deemster.*]

No legislation of general interest was passed in the year.

3. JERSEY.

[*Contributed by* E. T. Nicolle, Esq.]

No legislation of sufficient importance to receive attention was passed in the year.

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[1] See *Journ. of Comp. Leg.* N.S. vol. xi. p. 343.

[2] See *supra*, p. 361.

4. GUERNSEY.

Only two laws were approved by Order-in-Council during the year. One merely applied to the town of St. Peter Port and the other dealt with abortion and concealment of birth on the lines of the English Offences against the Person Act, 1861.[1]

II. BRITISH INDIA.

[*Contributed by* SIR COURTENAY ILBERT, G.C.B., K.C.S.I., C.I.E.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—17.

Press.—It was unfortunate that the first law passed by the reformed and enlarged legislative council of the Governor-General should have to be an Act to provide for the better control of the press. The Indian Press Act, 1910 (No. 1), imposes liability to forfeiture for the printing or publication of what was described in the debates on the measure as "prohibited matter." This prohibited matter is defined by s. 4 (1) as meaning—

> any words, signs, or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication, or otherwise—
>
> (*a*) to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence; or
>
> (*b*) to seduce any officer, soldier, or sailor in the army or navy of His Majesty from his allegiance or his duty; or
>
> (*c*) to bring into hatred or contempt His Majesty or the government established by law in British India or the administration of justice in British India or any native prince or chief under the suzerainty of His Majesty, or any class or section of His Majesty's subjects in British India, or to excite dissatisfaction towards His Majesty or the said government or any such prince or chief; or
>
> (*d*) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do; or
>
> (*e*) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order; or
>
> (*f*) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to be interested, with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions.

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[1] 24 & 25 Vict. c. 100.

Under the Press and Regulation of Books Act, 1867, printers and newspaper publishers are required to make certain declarations as to the name of the printer and publisher and as to the place of printing or publication. Under the new Act this declaration must now be accompanied by the deposit of security to an amount to be fixed by a magistrate within the limits of 500 and 2,000 rupees. If, in the opinion of the local government, an offence is committed by the printing or publication of prohibited matter, the security may be forfeited by order of that government and the declaration annulled. But a fresh declaration may be made on deposit of an increased security. A third offence may involve forfeiture of the printing press. These are the provisions as to presses started and newspapers first published after the commencement of the Act. Presses and newspapers then existing do not fall under the new law until, in the opinion of the local government, prohibited matter has been printed or published, but, in that case, the maximum limit of the initial security is higher (5,000 rupees).

The forfeiture is effected by order of the executive government; but against this order an appeal lies to a special bench of the high court, composed of three judges, or of all the judges if the total number is less than three. There are provisions for search warrants and for detention of packages sent by post. The provisions of the Press Act supplement and should be read in connection with the Newspapers (Incitement to Offences) Act, 1908, and the Indian Criminal Law Amendment Act, 1908, both of which arose out of and were intended to deal with offences of the same character as those aimed at by the Act of 1910.

Currency.—The Indian Paper Currency Act, 1910 (No. 2), consolidates the two Acts of 1905 and 1909, with amendments which give currency throughout British India to 10-rupee and 50-rupee notes. This currency had been previously given to 5-rupee notes by the Acts of 1905 and 1909.

Penal Code.—The Indian Penal Code Amendment Act, 1910 (No. 3), amends s. 75 of the Indian Penal Code so as to make it cover the cases of habitual offenders passing from Berar to the Central Provinces or *vice versâ*.

Companies.—The Indian Companies (Amendment) Act, 1910 (No. 4), amends the Indian Companies Act, 1882, by enabling companies, in certain cases, to pay interest out of capital and to re-issue redeemed debentures. It is understood that a Bill for consolidating and revising the Indian Companies Acts on the lines of the English Act of 1908 is in course of preparation.

Diseases of Horses.—Dourine appears to be a disease which affects horses used for breeding purposes. The Dourine Act, 1910 (No. 5), is a permissive measure enabling local governments to take steps for preventing the spread of the disease by means of registration, appointment of inspectors and veterinary practitioners, and to pay compensation for loss occasioned by preventive action.

Finance.—The Indian Stamp (Amendment) Act, 1910 (No. 6), the Court Fees (Amendment) Act, 1910 (No. 7), and the Indian Tariff (Amendment)

Act, 1910 (No. 8), were part of the budget arrangements for the year, under which it was found necessary to impose further taxation yielding roughly about 170 lakhs of rupees. The first Act increased the stamp duties on bills of exchange and promissory notes, and on the issue and transfer of marketable securities; the second increased the rate of probate and succession duties; the third increased or imposed import duties on liquors, tobacco, silver, and petroleum. These three measures were of considerable financial importance, but a description of their provisions belongs rather to the region of finance than to that of legislation, and could not well be detached from the consideration of the budget as a whole.

Electricity.—The Indian Electricity Act (No. 9) is a complicated Act which regulates the conditions under which licences may be granted for the supply of electricity, and supersedes the Electricity Act of 1903. The provisions appear to be somewhat more elastic than those of the Act which it supersedes, and it gives a freer hand to local governments as distinguished from the central government. Speaking generally, it embodies improvements in machinery suggested by experience in working the previous Act.

Indian Museum.—The Indian Museum Act, 1910 (No. 10), alters the constitution of the trustees of the Indian Museum at Calcutta, and the administration of the various collections under their management. It supersedes and repeals the two previous Museum Acts of 1876 and 1887.

Courts.—The Central Provinces Courts (Amendment) Act, 1910 (No. 11), strengthens the constitution of the court of the judicial commissioner of the Central Provinces and enlarges the jurisdiction of the subordinate judges. The growth of civil judicial business in the Central Provinces, consequent on the commercial and industrial development of the province, has made these changes necessary.

Emigration.—The Indian Emigration Act, 1910 (No. 14), gives the Government of India general power to prohibit emigration to any country whenever it has reason to believe that sufficient grounds exist for the prohibition. Under the Act of 1908 the emigration could only be prohibited on certain specified grounds, such as the prevalence of epidemic disease. The Act arose out of dissatisfaction with the treatment of British-Indian subjects in Natal.

Cantonments.—The Cantonments Act, 1910 (No. 15), was introduced as a small amending Bill, making two trifling alterations in the law, but was converted in committee into a measure of consolidation, superseding previous enactments.

Census.—The Indian Census Act, 1910 (No. 16), was passed to provide for the census taken in March 1911. It is practically identical in terms with the Act of 1900.

The other Acts of the year are not of sufficient importance to require specific notice.

2. MADRAS.

Acts passed—0.

3. BOMBAY.

Acts passed—4.

Omnibus Legislation.—The Bombay Repealing and Amending Act, 1910 (No. 1), repeals and amends, by means of a schedule, sundry provisions of divers Acts relating to different subjects. Probably the repeals and amendments are of no great importance; otherwise this form of legislative procedure would seem open to what used to be called a demurrer for multifariousness.

Village Tenures.—The ordinary form of land tenure in the Bombay Presidency is the rayatwari tenure, under which the Government, as collector of revenue, is brought into immediate contact with the individual cultivator; but in some parts of Gujarat and elsewhere there are lands held by a joint tenure and subject to a joint liability for revenue such as is common in the United Provinces. Tenures of this kind, which are known as Bhágdári and Narwádári tenures, tend to decay and disappear, and a Bombay Act of 1862 was passed for their preservation. The object of the Bhágdári and Narwádári Tenures Act, 1910 (No. 2), is to provide means for their restoration when they have disappeared. About the expediency of their preservation or restoration there appeared to be some difference of opinion in the legislative council.

Hereditary Village Offices.—The Bombay Hereditary Offices Act, 1910 (No. 3), alters the statutory regulations as to the succession, duties, and liabilities of the hereditary village officers known as Watandárs and Matádárs, and for that purpose amends Acts of 1874 and 1887.

Bombay Port Trust.—The Bombay Port Trust (Amendment) Act, 1910 (No. 4), amends the Act of 1879 by enabling the port board to appoint a deputy chairman.

4. BENGAL.

Acts passed—4.

Calcutta Port.—The Calcutta Port (Amendment) Act, 1910 (No. 1), amends the Act of 1890 by inserting provisions as to the grant of pensions, gratuities, and allowances to officers and servants injured, and the surviving relatives of officers or servants killed, in the execution of their duty.

Bengal Municipalities.—The Bengal Municipal (Amendment and Validation) Act, 1910 (No. 2), validates certain proceedings under the Act of 1884.

Calcutta Police.—The Calcutta and Suburban Police (Amendment) Act, 1910 (No. 3), makes several amendments in the two Acts of 1866 which regulate the powers and duties of the police in Calcutta and its suburbs. Many of these amendments appear to have been modelled on or suggested by provisions of the City of Bombay Police Act of 1902. The new powers conferred on the police authorities include powers to give directions as to the mode of admission of the public to, and for securing the peaceful and orderly conduct of persons attending at, any place of public amusement, assembly, or meeting, powers to prohibit the public utterance of cries, singing of songs, or playing of music, to prohibit the delivery of public harangues, the use of gestures or mimetic representations, and the preparation, exhibition, or dissemination of pictures, symbols, placards, or other things of a nature to outrage morality or decency, or likely, in the opinion of the commissioner of police, to inflame religious animosity or hostility between different classes, or to incite to the commission of an offence, to a disturbance of the public peace, or to resistance to, or contempt of the law or lawful authority, and powers to prohibit a procession or a public assembly. These provisions naturally became the subject of much debate in the legislative council, and attempts were made, by amendments, to exclude from the definition of "place of public amusement" places where "music," "singing," and "dancing" go on for religious purposes, and in other ways to restrict the scope of the provisions and limit the powers of the police under them.

Local Rates.—The main object of the Bengal Cess (Amendment) Act, 1910 (No. 4), was to amend the Cess Act of 1880 so as to enable revaluation for purposes of cess or local rates to be carried on simultaneously with the work of settlement for revenue, and thereby to lessen the cost entailed by the operations on district boards.

5. EASTERN BENGAL AND ASSAM.

Act passed—1.

Excise.—The Eastern Bengal and Assam Excise Act, 1910 (No. 1), consolidates with amendments those provisions in Acts passed by the Governor-General's Council or the Bengal Council which regulate the administration of the excise law in the new province.

6. UNITED PROVINCES.

Acts passed—4.

Waterworks.—The United Provinces Waterworks (Amendment) Act, 1910 (No. 1), amends the provisions of the Act of 1891 as to the recovery of water rates.

Settled Estates.—The Oudh Settled Estates (Amendment) Act, 1910 (No. 2), and the Oudh Estates (Amendment) Act, 1910 (No. 3), regulate the rights and powers of the taluqdars or landlords of Oudh and embody important amendments of the Oudh Estates Act, 1869, and its successor, the Oudh Settled Estates Act, 1900. They bring within the operation of the Act of 1869 estates which had been excluded from its scope by legal decisions, and enable taluqdars whose estates are subject to the ordinary Hindu or Mohammedan law of succession to apply the rule of primogeniture or single-heir succession in its place.

Excise.—The United Provinces Excise Act, 1910 (No. 4), was passed in order to give effect to the recommendations made by the committee appointed by the Government of India in 1905 to inquire into the system of excise administration in India. That committee had prepared a general Act applying to the whole of British India, but the Government of India thought that it would be better to deal with the subject by provincial legislation. Accordingly this Act supersedes for the United Provinces the previous Acts of the Government of India.

7. PUNJAB.

Act passed—1.

Rules of Local Government.—The one Act passed by the Punjab Legislature is the Punjab Laws Amendment Act, 1910. It merely alters the mode of publishing and arranging rules and circulars of the local government.

8. BURMA.

Acts passed—2.

Service and Execution of Processes.—The Burma Process Fees Act, 1910 (No. 1), enables the local government to make rules for regulating the service and execution of processes and notices issued by civil and criminal courts and revenue and executive officers and the charge of fees in connection therewith.

Steam Boilers and Prime Movers.—The Burma Steam Boilers and Prime Movers Act, 1910 (No. 2), follows the lines of legislation on the same subject for other provinces.

9. REGULATIONS UNDER 33 VICT. c. 3.

Regulations made—6.

Ajmer and Burma.—Regulations (1) and (2) merely amend in detail regulations previously made for Ajmer and for the hill districts of Burma.

Aden.—The Aden Arms (Sea Traffic) Regulation, 1910 (No. 3), places restrictions on the sea-traffic in arms, ammunition, military stores, and explosives between Aden and places in the Gulf of Aden, and supersedes a Regulation of 1902 which had been made for the same purpose.

Sonthal Parganas.—The Sonthal Parganas Rural Police Regulation, 1910 (No. 4), supersedes the Police Regulation of 1902.

British Baluchistan.—The British Baluchistan Bazars Regulation, 1910 (No. 5), lays down regulations embodying a system of quasi-municipal government for bazars in British Baluchistan.

Burma Petroleum.—The Upper Burma Oilfields Regulation, 1910 (No. 6), provides for the control of the petroleum-mining industry in Upper Burma. It gives power to make rules for the control of oil-mining operations, with special rules as to fire, and provides for inquiry into accidents.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* Lewis Maartensz, Esq., *Additional District Judge, Colombo, Ceylon.*]

Ordinances passed—24.

Opium.—The object of the Opium Ordinance (No. 5) is to place the importation, sale, and distribution of opium under the direct control of Government, with a view to restricting the consumption of the drug.

Opium is defined by the Ordinance so as to include every kind, class, and character of opium, whether crude, prepared, or refuse, and all narcotic preparations thereof or therefrom, and all morphine or alkaloids of opium, and all preparations in which opium or its alkaloids enter as ingredients, together with all opium leaves, and wrappings of opium leaves, whether such leaves or wrappings are prepared for use or not. But a number of medical preparations containing more or less opium, specified in a schedule to the Ordinance, are exempted from the definition, and power is given to the Governor to amend the schedule by notification in the Government Gazette. The Ordinance seeks to attain its object by restricting the consumption of opium to persons who, prior to a certain date, have been registered as consumers.

The following are the main provisions of the Ordinance :

(1) The importation of opium except by Government is entirely prohibited.

(2) The sale or barter of opium is restricted, with certain exceptions, in favour of medical practitioners, licensed vederalas,[1] and others, to authorised vendors.

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[1] Vederala means a person who practises medicine or surgery, or any branch of medicine or surgery, according to native methods.

(3) The possession of opium is forbidden except in certain specified cases.

(4) Provision is made for the importation by Government of the necessary quantity of opium and for the appointment of authorised vendors.

(5) Authorised vendors may supply opium only to registered consumers and vederalas, and then only in the quantity in respect of which the consumer or vederala is registered; and power is taken to make regulations for gradually reducing the quantity of opium supplied to registered consumers.

(6) Provision is made for the registration of consumers, which is as follows: The applicant must adduce proof to the satisfaction of certain officers named in the Ordinance of the amount of opium which he is accustomed to consume, the place from which he has obtained such opium, and the manner and form of the use of it to which he is addicted. The applicant, if registered, is furnished with a certificate of registration, which specifies the amount of opium which may be supplied to him, and the name and place of business of the authorised vendor from whom he must obtain his supplies. A copy of this certificate is issued to the authorised vendor named in the certificate, and another copy is retained by the officer issuing it.

(7) The possession of hypodermic syringes and similar apparatus is prohibited.

(8) The Ordinance now in force[1] is repealed.

Municipal.—Ordinance No. 6 consolidates the numerous existing Ordinances relating to municipalities, and introduces the following alterations in the law:

(1) The list of voters is made the only evidence of the right to vote at elections.

(2) The system of voting by ballot is introduced, and voting by proxies is abolished.

(3) Provision is made by which the property qualification in any particular town, whether as regards voters or councillors, may be reduced or increased by the Governor on the recommendation of the Municipal Council.

Local Forces.—Ordinance No. 8 embodies the law relating to Volunteers in a single enactment, and includes provision with regard to the Governor's Bodyguard as well. In the new Ordinance the details with regard to organisation and discipline of the volunteer forces have been revised and brought into line with modern conditions, and provision is made for the insurance of the horses of the members of the volunteer force who are required to use horses in the performance of their duties.

The Legislative Council.—The Legislative Council of the island consisted of official members and eight unofficial members appointed by the Governor to represent the burgher, the Sinhalese and Tamils, the planting community, the merchants, the general European community, the Kandyan Sinhalese, and the Muhammadans.

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[1] The Opium Ordinance, No. 5 of 1899. See *Legislation of the Empire*, vol. iii. p. 68.

The number of unofficial members has been increased, and Ordinance No. 13 provides for the election of the members to represent the Europeans (two members), the burghers (one member), and the educated Ceylonese community (one member).

Muhammadans.—Ordinance No. 20 supplies an omission in the Muhammadan Marriage Registration Ordinance, 1866, by adding a section to it penalising incest among persons professing the Muhammadan faith in Ceylon.

The majority of the Ordinances passed were amending Ordinances of no great importance.

2. HONG-KONG.

[*Contributed by* THE HON. MR. C. G. ALABASTER, *Acting Attorney-General.*]

Ordinances passed—34.

Pensions.—The Pension Amendment Ordinance (No. 1) enables the Governor in Council to require any judge or other public officer to retire from the public service of the Colony at any time after he attains the age of sixty.

Oaths.—The Oaths Ordinance (No. 3) enables Christians and Jews taking oaths to audibly say, "I swear by Almighty God," instead of kissing the Book, which they are required to hold in their hand. The officer administering the oath uses the same formula as heretofore. Those who are neither Christians nor Jews are required to be sworn as heretofore. The Scotch oath is preserved for those who desire it; and there is nothing in the Ordinance which would prevent those who wish to be sworn by kissing the Book from doing so. It may be mentioned that Chinese, who form the bulk of the population, are never sworn in the Colony by the saucer-breaking or candle-snuffing method described in practice text-books. They make a statutory declaration instead.

Crown Suits.—The Crown Suits Ordinance (No. 5) provides for actions by the Crown, the Governor, the Government, or officers in their official capacity being brought by and in the name of the Attorney-General. Actions *against* the Crown or the Government are already brought against the Attorney-General in accordance with the provisions of the Code of Civil Procedure, 1901. It is also provided by the Crown Suits Ordinance that for the purpose of signing Government contracts the Governor or officer signing on behalf of the Government shall not be deemed to be an individual, but the functionary of an office with perpetual succession for that purpose.

Magistrates Amendment. — The Criminal Sessions of the Supreme Court are held on the 18th day of each month, and to prevent committals at the last moment the Magistrates Amendment Ordinance (No. 7) provides for the committal to the sessions of the following month of all prisoners committed on or after the 10th of any month. The Ordinance also enables magistrates to direct the whipping of male offenders whose ages do not exceed sixteen convicted of larceny, assault causing actual bodily harm, or indecent assault.

Malicious Damage.—The Malicious Damage Amendment Ordinance (No. 10) introduces the provisions of 24 & 25 Vict. c. 97, ss. 35 and 36, which have become necessary owing to the opening in 1910 of the first railway in the Colony—the British section of the Kowloon-Canton Railway, which will connect with the Canton-Hankow Railway, and thence with the Siberian line, so as to eventually establish direct railway communication between the Colony and Calais. The amending Ordinance also enables the Governor in Council to fine landowners in village communities where wanton damage has been done by the inhabitants to trees and other property on Crown land.

Opium.—The Opium Amendment Ordinance (No. 11) makes unlawful possession of morphine or compounds of opium an offence.

Copyright.—The Copyright Ordinance (No. 14) applies certain provisions of the British Copyright Act, 1842, and the provisions of the Copyright (Musical Compositions) Acts, 1882—1888, to the Colony.

Guardianship.—The Protection of Women and Girls Amendment Ordinance (No. 15) provides that where a parent or guardian has voluntarily parted with a girl for the purpose of adoption into another family, or where such parent or guardian has received money for parting with the custody of such girl, such parent or guardian shall not be deemed to be entitled as of right to the custody of such girl, and the legal guardianship of such girl shall be deemed to be vested in the Registrar-General, who may take such action as he thinks best to secure her welfare.

Cinematographs.—The Theatres and Public Performances Regulation Amendment Ordinance (No. 17) makes cinematograph displays subject to the permission of the Registrar-General.

Crown Lands.—The Crown Lands Resumption Amendment Ordinance (No. 18) provides a less elaborate machinery, in the case of resumptions of land under $500 in value, than is provided by the principal Ordinance.

Marriage.—The Marriage Amendment Ordinance (No 20) places restrictions on civil marriages before the Registrar-General of Chinese persons, so that unless provided with a special licence from the Governor they can only contract a civil marriage if they satisfy the Registrar-General (*a*) that both parties were born within the Colony, or are permanently resident therein; and (*b*) that a marriage has already been contracted or is about to be contracted between the parties according to the rites and customs observed in China; and (*c*) that neither of the parties has living an undivorced husband or wife other than the person with whom she or he desires to contract the civil marriage.

Highways.—Ordinance No. 21 gives the Governor in Council power to stop up, divert, or turn any street on Crown land, or any portion of such street, either entirely or by reserving a bridleway or footway along the whole or any part thereof, or to alter the level of any such street or portion thereof, and provides for the payment of compensation to persons injuriously affected.

Midwives.—Ordinance No. 22 applies the provisions of the British Act 2 Ed. VII. c. 17 to the Colony.

Lepers.—Ordinance No. 24 provides for the establishment of leper asylums, and for the segregation of lepers.

Volunteer Reserve.—Ordinance No. 25 makes provision for the formation of a Volunteer Reserve.

Criminal Conversation.—The Magistrates Amendment Ordinance (No. 28) makes it an offence to harbour without reasonable excuse any Chinese woman married according to the laws or customs of China who has left the protection of her husband. The Ordinance also enables the magistrate to order the person convicted to pay the husband damages not exceeding $200, with a proviso that the receipt of such damages shall be a bar to any action for damages for criminal conversation, a common law action which still obtains in the Colony, where the Courts have no divorce jurisdiction.

New Territories Regulation.—Ordinance No. 34 consolidates and amends the laws relating to the additional territories acquired by the Colony under the convention of June 9, 1898, between H.M. Queen Victoria and H.M. the Emperor of China.

OTHER ORDINANCES.

No. 2. Liquors Amendment; repealed by No. 9 of 1911.
No. 4. Official Signatures Amendment.
No. 6. Merchant Shipping Amendment.
No. 8. Squatters Amendment.
No. 9. Pharmacy Amendment.
No. 12. Executive Council Relief of Duties.
No. 13. Young Persons Amendment.
No. 16. Liquors Amendment; repealed by No. 9 of 1911.
No. 19. Appropriation.
No. 23. Kellet Island Amendment.
No. 26. Malicious Damage Amendment.
No. 27. Dangerous Goods Amendment.
No. 29. Pharmacy Amendment.
No. 30. Appropriation.
No. 31. Liquor Licences Amendment; repealed by No. 9 of 1911.
No. 32. Promissory Oaths Amendment.
No. 33. Opium Amendment.

3. STRAITS SETTLEMENTS.

[*Contributed by* T. BATY, ESQ., D.C.L., LL.D.]

Enactments passed—32.

Houses of Detention (Ordinance 4).—This amends an Ordinance of 1896 (No. 17) (a sort of Criminal Law Amendment Act) by introducing a novel provision empowering the "Protector," with the consent of another official, to detain for two months in a "place of safety," and subject to its rules and regulations, *any* unmarried woman or girl (under nineteen) who may be considered to need protection and whose lawful guardian cannot be found (or who has been ill-treated; whether, it seems, by her guardian or not). If she is under sixteen, the two-month limit does not apply: she has to be confined until the Protector is satisfied with the arrangements made for her welfare.

Crime.—By Ordinance 6 an anthropometrical register of criminals is established.

Currency.—By Ordinance 7 power is given to private persons, and it is made the duty of public servants, to cut light or counterfeit coin.

Bankruptcy.—By Ordinance 9 it is made clear that (so far as the Straits Law can effect that end) the bankrupt's property wherever situate is brought into the scope of the Straits Bankruptcy Act (1888). Thus a writ of execution levied in England would be an act of bankruptcy in Singapore. Unlike an English bankrupt, a Straits bankrupt is criminally liable if he absconds: this is now extended to absconding before the date of the receiving order.

Courts and Lawyers (Ordinance 11).—The Supreme Court is given leave to permit subordinate judges and magistrates to try cases in which they are personally interested. Officers of the Courts are prohibited from bidding at Court sales. A person to be admitted as a solicitor on a British qualification must have resided for six months in the Colony or in Malaya. Solicitors may be suspended for two years as a maximum (formerly three months). The Bar Committee is given power to examine any person ordered by a judge to appear before it on an inquiry into the fitness of a solicitor and such a person is "legally bound to tell the truth."

Emigration (Ordinance 12).—The former law (Ordinance 21 of 1896) is (except § 15) repealed and re-enacted, being amended in various directions. Emigration to Malaya is excluded from the scope of the legislation. Emigration under a contract to take part in exhibitions and musical performances, etc., is termed "labour" and brought within the Act—but domestic service is now excluded, as not being "labour." The term "employer" is defined as "any person who has . . . entered into a contract or agreement with a labourer."

The trade of recruiting labour is only to be carried on by licensed persons; the licence is subject to be cancelled without notice and without compensation.

Anti-Trust Legislation (Ordinance 17).—Cultivated rubber is a material which can only be dealt in by licence. No licence is necessary for "keeping a place" for the purpose of storing rubber grown on land in one's own occupation. But it is illegal without a licence to purchase it, or to keep any place for the purpose of subjecting it to any process whatsoever. Licences to buy involve a deposit of $200, and may be refused for cause. In particular, a licence may be refused to the agent of any person, corporation, or combination "which" is attempting or about to attempt to secure control of the output of, or the market for, "any" [not "all"] cultivated rubber. Under similar circumstances the licence may be cancelled, though unexpired. Powers of inspection of places where the licence is used are given. Books of account must be kept in great detail, and purchases must be made under written agreements and memoranda, also very detailed. The cultivator of rubber is to register it (£5 penalty). The Governor has a free hand in making further rules, and there is an appeal to him from the licensing officer. The short limitation period of three months is prescribed for all actions against public servants under the Act.

Legislative Council (Ordinance 19).—Unqualified persons having participated in the proceedings of the Legislative Council, the proceedings of that body were retrospectively validated.

Statute Revision (Ordinance 23).—The Chief Justice, the Attorney-General (ex-officio), and three other persons are appointed to revise the colonial statutes. Decisions are to be taken by a majority, the Chief Justice having a casting vote. "The Commission shall be furnished with stationery." Every legislator and head of a department, and such other persons as the Governor shall prescribe, is to receive a leather-bound copy. The edition is to be dedicated to the memory of the late Thomas Braddell. Each copy is to contain a declaration that it is published under the authority of the Government. The usual form is followed, such as for instance is employed in the Revision Act of British Guiana (No. 7 of 1904). But power is given to repeal, by omitting, obsolete statutes. They may also transpose enactments from one ordinance to another, and they may make "formal" alterations as to names, localities, officers and otherwise, so as to "bring any ordinance into conformity with the circumstances of the Colony." The limited power to correct clerical errors contained in the Guiana Act disappears: the general power to perfect the form of the Acts being considered sufficient. The useful Guiana provision securing the reference of each enactment in the Revised Edition to its appropriate year of passage also disappears. This increases the labours of future generations. The mode of legislation, where legislation is necessary for the production of a harmonious edition, is somewhat more summary than in Guiana. But the provisions for the disposal of copies are much more detailed. The provisions giving a qualified validity for certain purposes to enactments omitted from the new edition, and rules and by-laws made under them, disappears. A useful section is added saving existing rights.

Christian Divorce (Ordinance 25).—Divorce jurisdiction as conferred on the Supreme Court by the Courts Ordinance, 1907, is withdrawn from it, and conferred on "the Supreme Court or a judge thereof." Apparently no law authorising divorce *a vinculo* between Christians ever obtained in the Colony. The present Act is to give relief on principles conformable to those of the English High Court. The ground of Straits jurisdiction in dissolution causes is domicile; that in nullity causes is place of celebration (quite a secondary ground in England); that in judicial separation and restitution suits is residence of both parties; that in jactitation is left undetermined. Grounds of dissolution are, besides those recognised in England, apostasy and bigamy combined (on the part of the husband). Common law bigamy is equally operative with ecclesiastical bigamy, and the bigamy and adultery may be with different persons. The grounds on which a petition may proceed without a co-respondent are specified: this is perhaps a little restrictive of the power of the Court. Condonation requires a return to conjugal cohabitation to establish it.

The grounds of nullity are set out under six heads, but they are not exclusive, and as nullity is a process which does not depend on statute, a nullity suit could presumably still be brought on other grounds. Nullity may also be granted on the ground that "the marriage was invalid by the law of the place where it was celebrated." Since it must (*vide supra*) have been celebrated in the Colony to come under the colonial jurisdiction, this seems rather a superfluous clause. Probably it means that the decree can be given when the forms prescribed by the Straits law were not fulfilled. If a marriage is annulled for non-criminal bigamy, or for insanity, children are legitimated.

Following the English Act, the Ordinance says nothing about the various defences to a petition for judicial separation, which were recognised in ecclesiastical practice. The English Courts adopted them, and so, it is presumed, will the Straits Courts. Indeed, the Ordinance expressly says that the Court must be satisfied that there is no legal ground why the petition should not be granted; and refers to "divorce a mensa et toro *under the existing law*." Petitioner's adultery will therefore (*semble*) be an absolute defence (or nearly absolute).

The Straits Act very carefully identifies the grounds of defence to a petition for restitution of conjugal rights with the grounds for claiming a judicial separation. There is an absolute prohibition to the Courts to award costs against a co-respondent who had not reason to believe that the respondent was a married woman (which presumably includes "man"). Alimony *pendente lite* is peremptorily restricted to one-fifth of income. The Court can diminish, or increase, permanent alimony, or maintenance after dissolution in the nature of alimony. The recent British provision according to which, in a *nullity* case, a person may be ordered to maintain a person who is not his wife and never was is repeated.

In varying settlements, the Court is not to benefit the parents at the expense of any children. Service out of the jurisdiction may be allowed or dispensed with. Witnesses may be asked to incriminate themselves in charges of adultery if they have given evidence contradicting it. Any proceeding may be heard *in camera*. Appeals only lie to the Privy Council on certificate of the colonial Court of Appeal. (It will be remembered that in England there is an absolute right of appeal to the Lords in dissolution suits.)

Drugs (Ordinance 27).—The present Drugs Act repeals that enacted in 1907. It takes away the wide power of the Governor to declare any drug "deleterious," and it excepts from its list of deleterious drugs (morphine, opium alkaloids, cocaine, eucaine, and their analogues and preparations) preparations of or containing opium which are intended to be used for smoking, chewing, or swallowing, or for external use.

"Syringe" includes injection-needle. By the scheme of the earlier Act, the colonial medical authorities were to supervise import; now they are made the sole importers. All consignments to chemists and medical practitioners must pass through them. Sales must be licensed by them. Doctors, veterinaries, and chemists may be so licensed, and dentists have the minor felicity of being licensed to possess and use. Government doctors and analysts, of course, do not require any licence. The mistake pointed out in § 5 (2) of the Act of 1907[1] is rectified. The old limit, according to which a person might lawfully be in possession of a scheduled drug in quantities of less than twelve official doses, is abolished. Formerly it was an offence to administer a scheduled drug to another; now it is equally wrong to administer it to oneself or to permit its administration. Penalties have been increased all round (use of a vessel in illicit import or export means a fine of $5,000), and provision made for anthropometric identification, also for inspection and analysis. By a special provision, an accused may be forced to testify against his co-accused, and *may* receive an indemnity. A "place" may be "kept" for the administration of a drug, though it is used on one occasion only. And a person who "appears" to have the care and management of a place is to be liable as its "occupier." It is a *presumptio juris* that a place is used for illicit purposes if a syringe is found there. Owners are likewise liable after six months' notice of a conviction.

The supply of false particulars in registration, etc., and the making of false documents for the purpose of obtaining scheduled drugs is penalised by imprisonment. The wide powers of arrest, seizure, and search given in 1907 are made still more drastic.

Proceedings against public servants or others acting under the Ordinance are limited to a period of three months. Also, "nothing done by any officer of the Government in the course of his duties" is an offence against its provisions.

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[1] See Journal, N.S. vol. ix. p. 395.

Holidays (Ordinance 31).—The anniversaries of the settlement of Singapore and Penang disappear as holidays: also the Coronation day and the Prince of Wales's birthday. Instead are added the Saturday before the first Monday in August, the Saturday after November 9 and the next Monday, and a day to be notified in September or October.

Criminal Procedure (Ordinance 10).—The Code of 1900 as from time to time amended has been re-enacted with amendments. The mode of legislation adopted in the Colony renders it difficult to ascertain what is really now in the re-enacted code now published. European police-sergeants are put on a level with inspectors in regard to powers of arrest, search, and of summoning and questioning persons within a radius of seven miles. There seem to be few alterations of substance.

Merchant Shipping (Ordinance 32).—This is a consolidating Act. It repeals some thirty-eight enactments, and re-enacts the substance of them with amendments.

Miscellaneous.—Other statutes deal with *Land Improvement*, *Incorporation* (private Acts), *Chinese Immigrants*, *Prisons*, *Railways*, *Malacca*, *Fire Arms*, *Legislation*, *Lepers*, *Appropriation*, *Labour*, and *Weights and Measures.*

4. FEDERATED MALAY STATES.

[*Contributed by* T. BATY, ESQ., D.C.L., LL.D.]

(i) GENERAL.

Enactments passed—24 (3, 9, 11, 12, 13, 15, 20, 21 not to hand).

Merchandise Marks (Enactment 1).—This is a statute on the lines of the British Act of 1887,[1] and practically identical with it. The customs, assay, and royal warrant sections (8, 16 and 20) are omitted. Power is added to enable the Resident-General to establish a system of registration of trade-marks.

Theatres.—Enactment 2 places theatrical and dancing entertainments under supervision.

Animals (Enactment 6).—The Act of 1904 is re-enacted with amendments. "Insects" are now protected from cruelty.

Exile (Enactment 10).—The Banishment Enactment, 1909,[2] is re-enacted with amendments.

Plantations (Enactment 19).—This introduces the Straits system of supervision of Asiatic field labour.

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[1] 50 & 51 Vict. c. 28.

[2] See Journal, N.S. vol. xi. p. 366.

Other Acts deal with *Motor-cars*, *Burials*, *Government Loans on Land*, *Census*, *Opium*, *Tamil Immigration*, *Plantation Thefts*, *Indian Immigration*, *Netherlands Indies Immigration*, and *Appropriation*.

(ii) SEPARATE STATES.

Pahang Rate (No. 1, Pahang).—An official committee having prescribed a rate on December 2, which they were empowered to prescribe on or before December 1, and doubts having arisen as to its validity, the date was validated *ex post facto*.

Pahang Revenue Form (No. 2, Pahang).—A similar Act.

Perak Railways (No. 1, Perak).—Introduces provisions regarding carriage of goods by sea, and damage to animals through fright or restiveness.

Selangor Rate (No. 1, Selangor).—A similar Act.

Selangor Water (No. 2, Selangor).—Empowers the levy of a rate to pay for waterworks.

These enactments are only referred to here in order to show what topics of legislation are dealt with by the several States. Why the Perak Railway Act is not general for the Federation is somewhat obscure. It corresponds to a similar Act just passed in the Straits Settlements.

5. MAURITIUS.

[*Contributed by the Procureur-General*, A. HERCHENRODER, ESQ.]

Ordinances passed—24.

Census.—The Census Ordinance (No. 2) was prepared on the lines of the measure passed in 1900 (Ordinance No. 20). Art. 1 is declaratory of the census and Art. 23 provides for the taking of the same in the Dependencies.

Plant Diseases.—The Importation of Plants (Diseases Prevention) Ordinance (No. 4) is borrowed from British Guiana Ordinance No. 21 of 1903.[1] Power is taken thereunder to prohibit or restrict effectively the importation of seeds, plants, cuttings, earth, soil or packages coming from any country or place specified in a Proclamation of the Governor, which are likely to be a means of introducing any plant disease from such country or place.

Death Sentence.—The Children and Young Persons (Abolition of Death Sentence) Amendment Ordinance (No. 6) gives a discretionary power to the Court in determining the age of a child or of a young person, in the absence of positive proof, for the purposes of the Children and Young Persons (Abolition of Death Sentence) Ordinance No. 13 of 1909.[1]

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[1] See *Legislation the of Empire*, vol. iii. p. 462.

Building.—The Building (Fees) Amendment Ordinance (No. 7)

(*a*) disposes of certain fees under the Building Ordinance, 1896 (No. 18), in favour of the Treasury, of the revenue of the Municipality of Port Louis or of the Boards of Townships, as the case may be;

(*b*) remove doubts as to the amount of the fee claimable in connection with certain inspections and survey of buildings;

(*c*) empowers the Governor to remit the fees under (*a*) and (*b*) in certain cases.

Banishment—The Banishment (Amendment) Ordinance (No. 8) restricts the operation of the Banishment Ordinance No. 34 of 1909[2] to aliens (i) convicted by a competent Court of certain offences or (ii) certified by the Court within twelve months after they last entered the Colony to have been sentenced in a foreign country with which there is an extradition treaty for a crime (not being an offence of a political character) which as respects that country is an extradition crime within the meaning of the Extradition Act, 1870.[3]

General Loan and Inscribed Stock.—The General Loan and Inscribed Stock Ordinance (No. 9) defines in one enactment the terms and conditions applicable to loans hereafter authorised to be raised by the Legislature of the Colony, provides for the creation of inscribed stock, and enables the Colony to take advantage of the provisions of the Colonial Stock Act, 1877, and the subsequent Acts on the same subject.[4]

Wrecks.—The Inquiries into Wrecks, and Marine Court Ordinance (No. 11) passed under the authority of s. 478 of the Merchant Shipping Act, 1894,[5] makes better provision for the exercise of the jurisdiction of the District Court of Port Louis, first Division, as a Marine Court sitting with assessors. The Ordinance is divided into six parts as follows:

Part I. *Preliminary*: Art. 2 is declaratory of the power of the Court to make inquiries into shipping casualties and conduct of masters, mates, or engineers of ships.

Part II. *Inquiries and Investigations as to Shipping Casualties.*—Art. 3 defines "shipping casualties"; Art. 4 designates the assessors to be appointed in cases of formal investigations.

Part III. *Power as to Certificates of Officers.*—Art. 7 empowers the Collector of Customs to apply for an inquiry into the conduct of masters, mates, or certificated engineers, and Art. 8 defines the powers of the Court in respect of the certificate of these officers.

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[1] See Journal, N.S. vol. xi. p. 369.

[2] See Journal, N.S. vol. xi. p. 371.

[3] 33 & 34 Vict. c. 52.

[4] See *Twentieth Century Statutes*, vol. i. p. 469.

[5] 57 & 58 Vict. c. 60.

Part IV. deals with the re-hearing of investigations and inquiries at the request of the Board of Trade.

Part V. contains supplemental provisions as to investigations and inquiries.

Part VI. *Miscellaneous.*—Art. 15 transfers the jurisdiction of the former Marine Board and of the former Marine Court to the Marine Court constituted under the Ordinance.

Quarantine.—The Quarantine (Amendment) Ordinance (No. 13) provides against possible evasions of the quarantine laws following on the erection of a lighthouse at Cave's point and the consequent removal of the lightship formerly anchored in front of the harbour of Port Louis, and which had its uses as a quarantine guard-ship.

Sale of Food.—The Sale of Food (Municipal Control) Ordinance (No. 14) gives to authorised municipal officers within the limits of the town of Port Louis the same powers of entering into shops and of inspection and control of food sold or stored therein as are vested in the sanitary authorities by Art. 41 of the Public Health Law No. 32 of 1894-5. Art. 1 (2) of the Ordinance is on the lines of s. 14 of the British Sale of Food and Drugs Act.[1]

Crown Lands.—Art. 1 of the Crown Lands (Amendment) Ordinance (No. 16) empowers the Governor to authorise the exchange by private contract of Crown lands for other lands, subject to the provisions of the Crown Land Ordinances Nos. 18 of 1874 and 19 of 1899. Art. 2 grants the lessee of a Crown land preference over the highest bidder for the lease of adjoining *pas géométriques*.

Electric Light.—The Electric Light and Power (Purchase) Ordinance (No. 17) empowers the Governor in Executive Council to purchase undertakings for the supply of electricity for public purposes under Ordinance No. 18 of 1902[2] and provides (Par. 3 of Art. 1) for a basis of valuation suitable to local circumstances.

Merchant Shipping.—The Merchant Shipping Ordinance (No. 19) brings together seventeen local Ordinances which are absorbed in the seven following parts of the measure:—Part I. Masters and Seamen; Part II. Distressed Colonial Seamen; Part III. Mercantile Marine Officers; Part IV. Survey of Passenger Steamers; Part V. Life-Saving Appliances; Part VI. Unseaworthy Ships; Part VII. Wreck and Salvage.

The Merchant Shipping (Extension) Ordinance (No. 20) adapts certain provisions of the Merchant Shipping Act, 1906,[3] to the Colony, viz. ss. 3, 6, 9, 10, 11, 22, 57; and applies Part III. (except s. 27) and so much of Part IV. and of Part V. as relate to shipping officers, engagement and discharge of seamen, payment and allotment of wages, legal rights to wages, mode of recovering wages, wages and effects of deceased seamen, provisions, health and accommodation of seamen, power of seamen to make complaints, protection of seamen from imposition, and discipline, to all ships registered at and trading with Mauritius (except such as are exclusively employed in the coasting trade) when such ships are within the jurisdiction of the Government of the Colony, and to the owners, masters, mates, and crews thereof.

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[1] 38 & 39 Vict. c. 63.

[2] See *Legislation of the Empire*, vol. iii. p. 152.

[3] 6 Ed. VII. c. 48.

Elections.—The Electoral Registers (Preparation) Amendment Ordinance (No. 21) makes permanent provision for the appointment by the Governor of additional officers (termed revising officers) for the purpose of adjudicating upon all matters incidental to the revision and preparation of yearly registers of electors within the period fixed in Ordinances Nos. 5 of 1887 and 22 of 1895.

Riparian Rights.—The Clearing of Rivers Ordinance (No. 22) extends and defines better the powers of the Executive to grant permission to clear river reserves and to cut trees growing therein.

Under Art. 1 the riparian owner may be authorised to clear the bed of a river from trees, weeds, growth and other impediment.

Under Art. 2 he may clear the banks on a width of 10 ft. from the water's edge.

Under Art. 3 the owner of river reserves may be authorised to remove therefrom trees in and under certain conditions.

Motors.—The Motor-Car Ordinance, 1910 (No. 24), regulates the use of motor-cars in the Colony, and embodies in substance the main provisions of the British Act.[1]

6. SEYCHELLES.

[*Contributed by* The Hon. A. Williamson, *Legal Adviser.*]

Ordinances passed—19.

The number of Ordinances passed during 1910 was considerably above the average of the previous six years. At least three—viz. the Licences, the Education, and the Harbour Dues Ordinances—may be considered of the first importance, whilst amongst the others several effected considerable changes in the law of the colony, or imported fresh subject-matter into the Statute Book.

Loans to Planters.—Ordinance No. 1 is an amendment of the principal Ordinance of 1904,[2] and enables the Government to increase by Rs. 50,000 the sum available for the purpose of enabling planters to borrow money at the low rate of 6 per cent., *i.e.* about one-half of the current local rate of interest, for the development of their estates. The augmentation of the loan fund to this extent was justified by the complete success of the original Ordinance, and by the beneficial effects which followed upon its operation.

Licences Consolidation.—Under the old Licences Law, no person was allowed to carry on a profession, trade, art, or calling without first taking out a licence, unless specially exempted by law from so doing. The principal Ordinance of 1904 contained a list of eighty-two professions and trades with specific licence duties, and persons desiring to engage in any profession or trade not mentioned in that list were under the necessity of applying for a special licence, the conditions of which were determined by the Governor. This cumbrous and somewhat vexatious and restrictive legislation has now been abolished, and under the new law (Ordinance No. 3), licences, for which the duties are in many cases greatly reduced, are only required for those professions and trades specially mentioned in the schedule. Among many provisions—which were framed for the purpose of removing difficulties previously existing—is one which defines the difference between the sweet juice of the sugar cane and bacca, the fermented form of the juice, the latter being the native intoxicant, the manufacture of which is punishable with heavy fines. Previously it was left to the discretion of the Courts to determine the difference, and, as the test was usually the palate of the arresting constables, the result was not always satisfactory. Bacca is now defined as juice of an alcoholic strength of 3 per cent. and upwards.

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[1] 3 Ed. VIII. c. 36.

[2] No. 4. See *Legislation of the Empire*, vol. iii. p. 167.

Customs.—An Amendment Ordinance (No. 4) gives power to the Governor in Executive Council to prohibit, if necessary, the importation of animals, birds, reptiles, and goods from other countries. Its object is to provide against the introduction of disease, from which the Colony enjoys a singular degree of freedom.

Penal Code.—An Amendment Ordinance (No. 7) adds a proviso to the Death Penalty clause of the Penal Code, and provides that sentence of death shall not be pronounced on or recorded against any person who in the opinion of the Court[1] is under the age of sixteen, but substitutes detention under conditions to be imposed by the Governor.

Board of Health.—The definition of the word "nuisance" is considerably amplified by the Board of Health Amendment Ordinance (No. 8), and special provisions are inserted which give the Board of Health extended powers in dealing with cases of overcrowding.

Legal Profession.—Ordinance No. 9 provides for the admission of barristers and attorneys to practise in Seychelles. Previously no fee was payable by members of either branch of the profession on admission. Now an entrance fee of Rs. 375 (£25) is imposed.

Education.—From many points of view the Education and the English Scholarship Ordinances (Nos. 11 and 12 respectively) may be regarded as the most important pieces of legislation of the year. They mark a new departure in the educational facilities provided by the Government. Education in the Colony, in so far as it receives State support, is placed under the control of a Governing Body of Education appointed by the Governor, and, in order that secondary education may receive special recognition, a new ollege, under the name of King's College, is brought into existence. Under e latter Ordinance, the scholarships granted for the purpose of enabling oys to continue their studies in the United Kingdom, and which were rmerly open for competition to pupils from other than the Government chool, are now confined to pupils attending the new college.

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[1] Cf. Ordinance 4 of 1909. See Journal, N.S. vol. xi. p. 372.

Quarantine.—Ordinance No. 14 introduces a modified form of quarantine y allowing the Health Officer, in cases which do not warrant the imposition f strict quarantine, but where it is undesirable to admit a vessel to full ratique, to admit her to partial pratique. Under this form of pratique, fficers of the vessel and first and second-class passengers only are allowed to nd, and it is in the discretion of the Health Officer to permit labourers to oard the vessel to work the cargo.

Diseases of Plants.—The Disinfection of Plants Ordinance (No. 16) rovides for the disinfection, if thought necessary by the Curator of the otanic Station, of all plants and seeds imported into the Colony, and was assed in view of future rubber developments.

Dogs.—The Stray Dogs Ordinance (No. 18) gives power to the police to npound and, if unclaimed within three days, destroy all stray dogs, and to estroy all dogs suffering from contagious diseases.

Harbour Dues.—The Harbour Dues Ordinance (No. 19) contains a evised scale of dues for Victoria Harbour. The charges have been greatly educed, and are now levied on a basis more in keeping with the fact that ictoria is merely a port of call, and not a terminus. The facilities now fforded by the Government to the shipping community are considerable, nd any feature in the old law approaching the nature of a burden has een removed.

7. WEI-HAI-WEI.

[*Contributed by* ALBERT GRAY, ESQ, K.C.]

Ordinances passed—2.

The territory of Wei-hai-wei was leased to Great Britain in 1898. It is either colony nor what is commonly known as protectorate: its case is hus most nearly analogous to that of Cyprus. It is governed by a British ommissioner, who legislates for its requirements under the supervision f the Colonial Office. It comes under the range of the Society's Review r the first time this year.[1]

Capital Offences.—Following the legislation of many colonies, provision made against the pronouncement of a capital sentence in the case of a child r juvenile under sixteen (No. 1).

Census.—The other Ordinance provides for the taking of a census of the rritory.

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[1] For review of legislation for the years 1903—1907, see *Legislation of the Empire*, ol. iii. pp. 171-3.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* R. R. Garran, Esq., C.M.G., *Secretary to the Attorney-General's Department and Parliamentary Draftsman.*]

Public Acts passed—41.

General.—Many of the most important Acts passed since the establishment of the Commonwealth were amended, some of them extensively. Amending Acts passed during the 1910 session were: Australian Industries Preservation Act, Commonwealth Conciliation and Arbitration Act, Customs Act, Defence Act, Immigration Restriction Act, Judiciary Act, Post and Telegraph Act, Postal Rates Act, Referendum (Constitution Alteration) Act, Sugar Bounty Act, Surplus Revenue Act.

Constitution Alteration.—The Constitution Alteration (State Debts) Act (No. 3 of 1910) alters s. 105 of the Constitution. This section of the Constitution, as originally passed, allowed the Commonwealth to take over from the States their public debts "as existing at the establishment of the Commonwealth," but these limiting words are now omitted by this Act, extending the power of the Commonwealth to debts subsequently incurred.

Financial.—The Naval Loan Act of 1909, by which the Governor-General was authorised to raise, by way of loan, a sum of money for naval defence, is repealed by Act No. 6 of 1910.

The Australian Notes Act, 1910 (No. 11 of 1910), authorises the issue of Australian notes by the Treasurer. From and after six months after the commencement of the Act, State notes are not to be issued or circulated by the banks, and a heavy penalty is inflicted for a contravention of this provision.

The notes are to be legal tender throughout the Commonwealth.

The moneys derived from the issue of Australian notes and the interest thereon are to be placed to the credit of a special account. Part of the moneys standing to the credit of the account must be held in gold coin for purposes of the reserve provided by the Act, and the remainder may be invested on deposit or in securities of the United Kingdom, the Commonwealth, or a State.

The gold reserve provided by the Act is as follows:

(*a*) An amount not less than one-fourth of the amount of notes issued up to £7,000,000;

(*b*) an amount equal to the amount of the notes in excess of £7,000,000.

The Treasurer is also authorised to issue Treasury Bills to an amount not exceeding the amount of notes issued and not redeemed when the Bills are issued.

The moneys raised by Treasury Bills are to be applied towards the redemption of Australian notes.

The Act provides heavy penalties for forging, copying, or defacing notes or bills, or having in possession forged notes or bills.

The Bank Notes Tax Act, 1910 (No. 14 of 1910), imposes an annual tax of 10 per cent. on all bank notes issued or re-issued by any bank in the Commonwealth and not redeemed.

The Surplus Revenue Act (No. 8 of 1910) amends the Surplus Revenue Act of 1908 by repealing s. 4 of that Act, which deals with the crediting and debiting of revenue and expenditure between Commonwealth and State.

S. 87 of the Constitution is superseded so far as it limits the power of the Commonwealth to expend the customs and excise revenue and regulates the payment of balances to the States.

In lieu thereof the Commonwealth for a period of ten years from July 1, 1910, and thereafter till the Parliament makes other provision, pays to the respective States an annual sum amounting to 25*s*. per head of the population of the respective States, and in addition special annually diminishing payments are to be made to Western Australia.

In addition, the Treasurer is to pay to the States, on a population basis, all surplus revenue at the close of each financial year.

Industrial.—The Commonwealth Conciliation and Arbitration Act, 1910 (No. 7 of 1910), amends the Commonwealth Conciliation and Arbitration Acts 1904—1909. By this Act the definitions of "employee," "industrial dispute,' "industrial matters," and "industry" have been made more elastic, and from the definition of "industry" the exception of domestic servants and of agricultural, etc., pursuits have been omitted.

The President of the Court is enabled to summon an open conference whenever he thinks it necessary in the interests of industrial peace. The Court is empowered to allow the amendment of the plaint or of any subsequent proceeding in an industrial dispute, and is not restricted to the specific relief claimed by the parties, but may include in the award any matter the Court thinks necessary for preventing or settling the dispute.

The section in the principal Act dealing with the power to grant a minimum wage and preference to unionists is repealed, and the new section inserted omits the conditions precedent to the granting of preference.

The Court has power to appoint a Board of Reference to deal with questions arising from time to time under the award. The proviso restricting the registration of unions to those whose funds are not used for political purposes is omitted.

Commerce.—The Australian Industries Preservation Act, 1910 (No. 29 of 1910), makes important amendments in the Australian Industries Preservation Acts 1906—1909.

This Act makes it an offence to enter into a contract "in restraint of trade or commerce" or "to the destruction or injury of . . . any Australian industry." Under the previous Act, the contract must have been entered into "with intent to restrain trade or commerce to the detriment of the public" or "with intent to destroy or injure. . . ."

The offence is made a continuing offence, and a penalty inflicted for each day the offence continues.

The Act provides that it is a good defence to a proceeding for an offence in restraint of trade to prove—

(*a*) that the restraint was not to the detriment of the public; and

(*b*) that the restraint was not unreasonable.

The offence of monopolising or attempting to monopolise trade is made a continuing offence with a penalty for each day the offence continues.

Four new sections dealing with procedure and the admissibility of evidence are added. Minutes, records, and memoranda of meetings, or entries purporting to be copied therefrom, are admissible in evidence and are evidence of the matters appearing therein, if proved to have been produced or to have come from the persons charged or representatives of those persons.

A similar section deals with books, letters, and documents containing any reference to any matter alleged to have been done in contravention of the Act.

A person is not to be excused from answering questions on the ground that the answer might make him liable to a penalty.

The Customs Tariff Act, 1910 (No. 39 of 1910), rectifies certain anomalies which were found to exist in the existing tariff.

The Excise (Sugar) Act, 1910 (No. 17 of 1910), amends the Excise Tariff, 1905, by omitting the paragraph which limits the imposition of excise duty on sugar until January 1, 1913, and omitting the paragraph making the excise duty on sugar for 1911 and 1912 two-thirds and one-third respectively of the rates imposed by the Excise Tariff, 1905.

The Sugar Bounty Act, 1910 (No. 16 of 1910), grants the bounty on sugar for an indefinite period, and amends the Sugar Bounty Act, 1905, by omitting the paragraph providing for a decreased bounty in 1911 and 1912.

In order to obtain the bounty the grower must certify as to the conditions of employment and rates of wages paid to employees, other than members of his family.

If the Minister finds that the rates of wages and conditions of employment are below the standard fixed by an Industrial Authority, or the standard of the locality, or are declared not to be fair and reasonable by the President of the Arbitration Court or the Judge of the Supreme Court of a State or a State Industrial Authority, the Minister may withhold the bounty or any part thereof.

The Shale Oils Bounties Act, 1910 (No. 23 of 1910), provides for the payment of bounties on the manufacture of kerosene and paraffin wax from Australian shale.

The manufacturer must furnish proof that the goods are of good and merchantable quality and that the conditions of the Act and regulations have been complied with.

The Act contains a section similar to the section in the Sugar Bounty Act, 1910, with regard to the payment of standard wages and the conditions of employment.

Provision is made for making regulations for carrying the Act into effect and for inspection of manufacture and the books of the manufacturer.

The Patents, Trade Marks, and Designs Act, 1910 (No. 19 of 1910), provides for the administration of the Patents Act, 1903—1909, the Trade Marks Act, 1905, and the Designs Act, 1906, by the Attorney-General, instead of by the Department of Trade and Customs as previously.

Defence.—The Defence Act, 1910 (No. 37 of 1910), makes important amendments in the Defence Act, 1903—1909.

The Act deals with the promotions above the rank of captain and major.

Under the previous Act the Governor-General could declare by Regulation what persons should be exempt from service in the defence force in time of war, but the Act of 1910 repeals this section and sets out what persons are to be exempted from service.

The Governor-General is empowered to establish horse depôts and horse-breeding farms.

Under the universal training provisions persons are to be trained in the citizen forces, as prescribed, from eighteen to twenty-five years of age, and twenty-five to twenty-six years of age. Service for those between twenty-five and twenty-six is limited to one registration or one muster parade.

Training in the citizen forces is to continue for seven instead of two years. The duration of training is altered by fixing the time for the junior cadets at 120 hours and requiring the citizen forces to spend a specified number of days in camp.

Special provisions are made for the training of pupils or students at educational establishments, so that they may be trained in special units. Theological students are exempted from the universal training provisions while they remain such students.

The Governor-General may exempt persons who live outside training areas, or who reside at great distances from an appointed training-place, from the universal training provisions.

New sections are inserted in the principal Act with regard to the establishment of the Military College.

The Naval Defence Act, 1910 (No. 30 of 1910), provides for the establishment of naval forces.

The Defence Act, 1903—1910, is amended in many respects consequent on the passing of this Act, and certain parts of that Act are, subject to the Naval Defence Act, to apply to the naval forces.

The Governor-General may raise and maintain such naval forces as he deems necessary for the defence of the Commonwealth and States.

A Board of Administration for the naval forces, to be called the Naval Board, is to be appointed by the Governor-General, and its powers and functions are to be prescribed by regulation.

All appointments of officers to the naval forces are to be during the pleasure of the Governor-General, but an officer's commission is not to be cancelled except for cause and after the officer has been called upon to answer in his defence.

Except in time of war an officer may resign his commission.

The naval forces are divided into two branches—the permanent naval forces and the citizen naval forces.

The permanent naval forces consist of officers appointed thereto and seamen bound to continuous naval service for the time of their enlistment.

The citizen naval forces consist of—

(*a*) the naval reserve forces—*i.e.* officers and seamen who are not bound in time of peace to continuous naval service and are paid;

(*b*) the naval reserve volunteer forces—*i.e.* officers and seamen who are not bound in time of peace to continuous naval service and are not ordinarily paid for their services.

The Act allows persons in any part of the King's dominions to enlist in the naval forces of the Commonwealth.

Seamen in the citizen naval forces may, subject to certain conditions, obtain their discharge before the expiration of their period of service.

The permanent naval forces are liable to continuous naval service, but the citizen naval forces only to such service as prescribed by regulation, and are only liable to active service when called out by Proclamation.

The Governor-General may place any part of the naval forces with the King's naval forces for service or training, or under the command of an officer of the King's naval forces.

The Naval Discipline Act and the King's Regulations and Admiralty Instructions shall apply to the naval forces, subject to the Naval Defence Act and the regulations thereunder.

The Act empowers the Governor-General to build ships, and construct docks, shipyards, foundries, and other necessary works.

The Act also provides for the transfer of officers, seamen, or vessels between the Commonwealth naval forces and the King's naval forces or the naval forces of any part of the King's dominions.

Provision is made for the granting of compensation or gratuities in case of death, incapacity incurred on active service, or on duty, or on retirement.

Territorial.—The Northern Territory Acceptance Act, 1910 (No. 20 of 1910), provides for the acceptance of the Northern Territory from the State of South Australia, and for carrying out the agreement between the State and the Commonwealth for the surrender and acceptance of the territory.

Provision is made for the continuance of laws, Courts, magistrates and officers, pending further provision, and the rights of transferred officers are preserved.

Trade, commerce, and intercourse between the Northern Territory and the States are to be absolutely free.

The Commonwealth agrees to assume the indebtedness of the State of South Australia in respect of the Northern Territory, to acquire the railway in the State of South Australia from Port Augusta to Oodnadatta, and to construct a railway from Port Darwin southwards to join the Port Augusta Railway.

The Commonwealth is authorised to construct a railway westerly from Port Augusta to the western boundary of South Australia.

The Northern Territory (Administration) Act, 1910 (No. 27 of 1910), provides for the provisional government of the Northern Territory.

Until Parliament otherwise provides, the Governor-General may make ordinances having the force of law in the territory.

The Governor-General may appoint an Administrator for the territory.

Subject to any ordinance made by the Governor-General, any law of the State of South Australia continued in force in the Northern Territory shall have effect as if it were a law of the territory.

No Crown lands in the territory are to be sold or disposed of for an estate of freehold, except in pursuance of a contract entered into before the commencement of the Act.

The several Courts of the State of South Australia shall have jurisdiction in the territory, subject to any ordinance made by the Governor-General.

The Seat of Government (Administration) Act, 1910 (No. 25 of 1910), provides for the provisional government of the territory for the seat of Government acquired from the State of New South Wales.

The Act contains provisions similar to those contained in the Northern Territory (Administration) Act, 1910, and in addition Acts of the State of New South Wales relating to industrial disputes and local government are no longer to apply in the territory.

Postal.—The Post and Telegraph Act, 1910 (No. 28 of 1910), makes amendments in the Post and Telegraph Act, 1901.

The Act provides that regulations made by the Governor-General shall be binding on all persons.

Persons publishing telephone lists without the authority of the Postmaster-General are liable to a penalty.

Persons breaking or damaging telegraph posts or wires are liable to a penalty, and if the offender is under the age of sixteen years, the father of the offender may be summoned to show cause why he should not be ordered to pay compensation, and the Court may order the father to do so.

The Postal Rates Act, 1910 (No. 24 of 1910), amends the Post and Telegraph Rates Act, 1902. This Act brings into force penny postage as regards letters, and cheapens other rates of postage.

With regard to books, a distinction is made between those printed outside Australia and those printed in Australia. The rate of postage for books printed in Australia is one-half of the rate for books printed outside Australia.

A definition of magazines is inserted in the schedule confining magazines to magazines, reviews, serials, and other similar publications printed and published in numbers at intervals not exceeding three months; and, as in the case of books, a distinction with regard to rates of postage is made between those printed and published in Australia and those printed and published outside Australia.

Land Tax.—The Land Tax Act, No. 21 of 1910 (which is to be read with the Land Tax Assessment Act, No. 22 of 1910), imposes a progressive land tax upon the taxable value of all the land in the Commonwealth owned by any person.

The tax is upon unimproved land values; the taxable value in the case of an absentee being the aggregate unimproved value of the land owned by him; and in the case of a resident, that aggregate unimproved value less a deduction of £5,000.

There are two scales of tax: one for residents, and one for absentees.

The Act is believed to be the first instance of a progressive tax which, instead of progressing by steps at arbitrarily fixed amounts, progresses by infinitesimal gradations according to a mathematical formula.

For non-absentees, or residents, the formula for ascertaining the rate of tax for so much of the taxable value as does not exceed £75,000 is as follows:

R equals rate of tax in pence per £.
V equals taxable value in £.
R equals $\{1 + \frac{V}{30000}\}$ pence.

That is to say, the rate of tax exceeds 1*d.* in the £ by $\frac{1}{30000}$ of one penny for every £ of the taxable value up to £75,000. The rate of tax for every £ of taxable value in excess of £75,000 is 6*d.*

In the case of absentees, the rate of tax per £ for so much of the taxable value as does not exceed £5,000 is 1*d.*; and for so much of the taxable value as exceeds £80,000 is 7*d.*; and for so much of the taxable value as lies between £5,000 and £80,000 is calculated from the following formula:

R equals rate of tax in pence per £.
E equals excess of taxable value over £5,000.
R equals $\{2 + \frac{E}{30000}\}$ pence.

That is to say, the rate exceeds 2*d.* in the £ by $\frac{1}{30000}$ of one penny for every £ of the excess of the taxable value over £5,000 up to £80,000.

The Land Tax Assessment Act contains the necessary definitions and other provisions for ascertaining the amount and extent of an owner's liability, and for the assessment, collection, and recovery of the tax.

S. 3 defines "absentee" primarily as a person who does not reside in Australia or in a territory under the authority of the Commonwealth; and secondarily as including persons who at the date when the ownership of their land is determined are absent, or have been absent for more than half of the preceding twelve months, unless they satisfy the Commissioner that they are residents.

"Owner" of land includes every person who jointly or severally, whether at law or in equity,

(*a*) is entitled to the land for an estate in freehold in possession; or

(*b*) is entitled to receive, or in receipt of, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise.

Part II. of the Act deals with administration, and provides for the appointment of a Commissioner of Land Tax and Deputy Commissioners.

Part III. provides for the levying of land tax, at rates declared by the Parliament. It defines taxable value (see summary of Land Tax Act), and declares that the tax shall be chargeable on land as owned on June 30 immediately preceding the financial year (commencing July 1) in and for which the tax is levied. It also defines the land exempted from tax—*e.g.* lands owned by a State or a public authority, or by certain charitable, educational, or other institutions—the exemption being limited to the owner specified, and not extending to other persons interested in the land.

Part IV., after dealing with assessments and returns, contains important provisions as to the liability of different classes of owners. These are necessarily somewhat complex in the case of a progressive tax upon the aggregate value of all the land owned by any person. They include provisions to prevent "double taxation" of different kinds of owners (*e.g.* legal and equitable) of the same land, and to prevent the incidence of the progressive rates being evaded by devices of conveyancing, company-making, etc.

The fundamental principle (s. 25) is that the owner of a freehold estate in possession is deemed to be the owner of the land, and to pay tax accordingly on its full fee simple value, whilst persons entitled in remainder or reversion pay nothing.

Conditional purchases under the State Crown Lands Acts are taxable if all conditions, except payment of purchase money, have been fulfilled; but not otherwise (s. 26).

Lessees under the State Crown Lands Acts are exempt, except in the case of leases with a right of purchase, or perpetual leases without revaluation (s. 29).

As regards lessors and lessees, a distinction is made between leases made before and after the commencement of the Act. As regards the latter, the principle of the Act is that the lessor shall be primarily liable as owner. The land is also included in the lessee's assessment, but he is entitled to a deduction of the amount of any tax paid in respect of the land by the lessor or by any precedent leaseholder (s. 27).

As regards leases made before the commencement of the Act, lessor and lessee are taxed on the values of their respective interests (s. 28).

Mortgagors are liable as owners, without deduction in respect of the mortgage. Mortgagees are not liable; except that mortgagees in possession, after three years from taking possession, are liable as secondary taxpayers (s. 32).

The principle of the several provisions of the Act as to primary and secondary taxpayers (s. 43) is that the land is included in the assessment of both for the purpose of determining the aggregate amount by which the *rate* of taxation is determined; and that the primary taxpayer pays the tax in respect of the land at the rate applicable to him, without deduction, whilst the secondary taxpayer is entitled to deduct, from the tax payable on the land at the rate applicable to *him*, the amount payable in respect of it by the primary taxpayer (s. 43).

Trustees are declared to be liable as if they were beneficial owners—but a trustee of different lands in severalty, in trust for different beneficiaries, is assessed separately in respect of the different trusts. Certain deductions are made in the case of existing trusts and settlements (s. 33).

As regards legal and equitable owners, the legal owner is the primary taxpayer, the equitable owner the secondary taxpayer, and entitled to deductions accordingly (s. 35).

In the case of buyer and seller, the seller remains a secondary taxpayer until delivery of possession and payment of at least 15 per cent. of the purchase money, unless the Commissioner is satisfied of the *bona fides* of the sale (s. 37).

Joint owners are jointly assessed, as one person, as primary taxpayers, with contribution among themselves; and the value of their respective interests is also added to their individual assessments, subject to the deductions to which as secondary taxpayers they are entitled (s. 38).

Shareholders in a company are treated as joint owners of the company's land; and two or more companies which consist substantially of the same shareholders (as defined) are deemed to be one company and taxable accordingly, with rights of contribution amongst themselves (ss. 39, 40).

Mutual life assurance companies are deemed to be owners of land of which they are mortgagees in possession, or which they have acquired under a mortgage; but as regards other land owned by them are deemed to be trustees, in severalty, for the policy-holders in proportion to surrender value (s. 41).

Part V. deals with appeals from assessments.

Part VI., for the protection of the revenue, empowers the Commonwealth, by application to the High Court, to acquire, at owner's valuation plus 10 per cent., land which has been under-valued to the extent of 25 per cent. or more, unless the Court is satisfied that the under-valuation was not fraudulent.

Parts VII. and VIII. respectively deal with the collection and recovery of the tax, and miscellaneous matters.

Miscellaneous.—The Immigration Restriction Act, 1910 (No. 10 of 1910), amends the Immigration Restriction Act, 1901—1908.

By this Act any immigrant may at any time within two years after entry into the Commonwealth be required to pass the dictation test.

A heavy penalty is inflicted on persons concerned in bringing immigrants secretly into the Commonwealth, and immigrants using false naturalisation papers are liable to a heavy penalty.

Power is given to officers to search vessels, vehicles, buildings, or places for prohibited immigrants.

The Emigration Act, 1910 (No. 26 of 1910), deals with the emigration from Australia of young persons and aboriginal natives.

It is made an offence to take out of the Commonwealth, except in pursuance of a permit,

(*a*) any child who is under contract to perform theatrical, operatic, or other work outside the Commonwealth;

(*b*) any European child unless in charge of some European adult person;

(*c*) any aboriginal native.

Every contract with a child or aboriginal native by which the child or native is to leave the Commonwealth is to be in writing, and is void unless a copy is filed with the Minister for External Affairs and the Minister, in writing, approves of the contract.

Masters, owners, and agents of vessels are to give notice of any suspected prohibited emigrants; and an officer may search vessels for prohibited emigrants and may remove any child or native he has reasonable grounds to believe is being taken out of the Commonwealth in contravention of the Act.

The Judiciary Act, 1910 (No. 34 of 1910), adds a new Part dealing with constitutional questions to the Judiciary Act, 1903—1907.

The Act provides for the reference by the Governor-General of any Act or enactment of the Parliament to the High Court for determination as to its validity.

The several States shall be entitled to be represented at the hearing, and the Court may allow any person interested in the matter to be represented.

2. NEW SOUTH WALES.

[*Contributed by* NORMAN BENTWICH, ESQ.]

Acts passed—Public, 44; Private, 6.

Besides passing a number of amending statutes dealing with, *inter alia*, the Criminal Law, Industrial Disputes, Fisheries, Crown Lands, and Parliamentary Elections, the Legislature of New South Wales passed measures of social reform in connection with Saturday half-holidays, the early closing of shops, minimum wage for persons engaged in clerical work, the sale of land under closer settlement, and superannuation allowances for persons in the Government railway and tramway services.

Supply.—Nos. 3, 4, 22, and 44.

Homing Pigeons.—No. 1 imposes a penalty not exceeding £10 upon any person who intentionally or negligently kills, ensnares, or injures any homing pigeon, knowing or having reasonable cause to believe that it is such (s. 3). It also penalises any unauthorised person who shall remove or tamper with the leg-bands of a homing pigeon.

Criminal Law.—The Crimes (Girls' Protection) Act (No. 2) amends the Crimes Act, 1900,[1] and extends to girls between the ages of sixteen and seventeen the protection given by the principal Act to girls between fourteen and sixteen, and brings step-fathers within certain provisions of the Act. "Whoever employs in, or under any circumstances whatever suffers to resort to or be in or upon, any premises used as a brothel or house of ill-fame, any girl under the age of eighteen years, shall be liable to penal servitude for five years" (s. 5).

Crown Lands.—No. 6 amends no less than fourteen Acts in minor details. S. 4 provides that it shall not be necessary to effect improvements on any conditional purchase or lease within three years from the date of the confirmation of the application for such purchase or lease to a greater value than 30 per cent. of the price of the subject land, or to effect improvements within six years from such date to a greater value than 50 per cent. of such price (s. 4).

Closer Settlement.—No. 7 is designed to facilitate the acquisition of land for closer settlement. Any three or more persons who are qualified to make and hold settlement purchases, and who desire to purchase from the same owner any private land, on entering into agreements with the owner may apply to the Minister to bring the lands under the Act (s. 3).

The Minister, on being satisfied that the lands are suitable, the applicants are qualified, and the lands do not exceed a home maintenance, may cause the lands to be valued by an Advisory Board and the Commissioners (s. 4).

If the amount at which the land is valued is less than the price fixed in the agreement, the agreement shall be rescinded unless the vendor agrees to reduce the price or the parties confirm the agreement (s. 5).

On approval by the Minister of an application the vendor may surrender to the Crown the land agreed to be purchased, in order that the purchaser may acquire it as a settlement purchase (s. 7).

On the surrender to the Crown, and on the purchaser paying to the bank a deposit of 6 per cent. of the proposed advance by the bank, the land, subject to the mortgage to be given, vests in the purchaser as a settlement purchase (s. 8).

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[1] No. 40 of 1900. See *Legislation of the Empire*, vol. i. p. 400.

On the surrender the Commissioners shall pay the vendor the whole r part of the purchase money. The bank advances the amount on mortgage f the land by the purchaser (s. 9).

The advance, with interest at 4 per cent., is to be repaid by the purchaser n instalments. The maximum amount of the loan is £2,500 (s. 10).

The limit of total annual advances by the bank is £1,000,000 (s. 14).

On forfeiture of any land subject to a mortgage, all moneys paid, ogether with the land, shall vest in the Commissioners. The land may be e-sold as a settlement purchase.

Workmen's Compensation (No. 10).—This important statute reproduces nany features of the English Act.

All persons under contract with an employer and engaged by way of nanual labour, save those whose employment is of a casual nature or vho are employed otherwise than for the purpose of the employer's trade r business, come within the definition of "workman."

When the claim is for more than £30, proceedings for recovery of ompensation are to be taken in the District Court; when for less than £30, before a stipendiary or police magistrate.

When an action is brought to recover damages independently of the Act or injury caused by an accident, and it is held that the employer is not liable n such action, but would have been liable to pay compensation, the action hall be dismissed, and the dismissal shall operate as a bar to any other proeedings for compensation, provided that the Court may assess the compensaion and deduct therefrom all the costs which have been caused by the plaintiff ringing the action instead of taking proceedings under the Act (s. 9).

When the Registrar of Friendly Societies approves of a scheme of ompensation the employer may contract out of the Act with any of his vorkmen who accept the scheme (s. 14).

In case of sub-contracting the principal remains liable to the workman, ut has a right of indemnity against the contractor (s. 15).

A workman has preference for his claims in case of the bankruptcy of the mployer or a winding-up if the employer is a company (s. 16).

Every employer, if required, must make an annual return to the Minister pecifying the number of injuries in respect of which compensation has been aid by him under the Act (s. 19).

In the schedule the maximum amount of compensation is fixed at £400.

Railway Service Superannuation (No. 11).—The Act creates a Board of even persons to administer the pensions (s. 3).

A deduction not exceeding 1½ per cent. of the salary of every officer in he railway service is to be made and placed to the credit of a special uperannuation account. The Treasury is to make good such further moneys s may be required to meet claims (ss. 4, 5).

A superannuation allowance is payable to an officer (*a*) who is over sixty nd has retired after ten years' or longer service; (*b*) who is under sixty and has been compelled to retire after ten years' or longer service through infirmity certified as being likely to be permanent (s. 6).

The allowance shall be payable for the rest of the life of the officer, and shall amount to one-sixtieth of an average of his annual salaries during his term of service, multiplied by the number of his complete years of service, but shall not exceed two-thirds of the average of such annual salary (s. 7).

Provision is made for allowances to officers in service at the commencement of the Act and for paying gratuities to officers incapacitated, not exceeding two months' salary for each complete year of service (ss. 9-11).

When an officer dies in the service his widow or personal representative shall be entitled to a refund of the deductions from his salary, together with interest. And where an officer dies within six months of retirement, his representatives may receive the difference between what he has received and the deductions from his salary (ss. 13, 14).

A superannuation allowance may not be assigned or charged, and a gratuity shall not be assets for the payment of debts (s. 21).

Shop Hours.—Acts Nos. 12 and 23 fix a closing time for shops in the metropolitan district, viz. 1 p.m. on Saturday afternoon, 6 p.m. on Wednesday afternoon, and 10 p.m. on Friday.

By the second Act, which amends the first, the time for closing butchers', poulterers', and hairdressers' shops is fixed somewhat differently.

Penalties are imposed for the breach of the Act, and powers are given to extend the Act to shops within any country shopping district.

Fisheries.—No. 14 amends the Act of 1902.[1] The Fisheries Board is dissolved, and the powers are vested in the Minister. The Governor may appoint an advisory board of six persons, of whom one shall be a licensed fisherman, one an oyster lessee, and one a person acquainted with the inland fisheries of the colony.

The Governor may appoint a Chief Inspector of Fisheries and any number of paid or honorary inspectors.

A number of amendments are also made in the principal Act.

Parliamentary Elections (Second Ballot) (No. 18).—This statute introduces the principle of the second ballot into elections, and provides for the revision of electoral registers immediately before an election.

No candidate can be elected unless he has received an absolute majority of the votes, *i.e.* a number of valid votes greater than one-half of the number of all the valid votes recorded at the election (s. 2).

If on the first ballot no candidate has received an absolute majority, a second ballot is to be taken between the two highest candidates, generally on the seventh day after the close of the poll on the first ballot (ss. 3, 4).

A candidate may not withdraw from the second ballot (s. 9).

The second part of the Act provides for the holding of Revision Courts before a general election.

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[1] No. 119 of 1902. See *Legislation of the Empire*, vol. i. p. 474.

A Court, consisting of a stipendiary or police magistrate, shall before a general election be held in each district to revise the supplemental rolls on a day not sooner than twelve days nor later than eighteen days after he issue of the writs (s. 13).

Any person may by writing in duplicate object to a man on the supplemental roll, on the ground that the person named is not qualified or does not reside in the district (s. 15).

The Revision Court shall strike out the name of a person known to be dead, not to be qualified, to be disqualified, or not to reside in the district (s. 16).

The principal Act is amended by making qualification depend on residence for a continuous period of one year in the Colony, or residence for that period in the Commonwealth of Australia and for six months of such period in the Colony.

Clerical Workers.—No. 19 empowers the Industrial Court, on the application of any employer of not less than ten clerks, or on the application of not less than ten clerks in similar appointment, (1) to fix the minimum wage and rates for overtime payable to such clerks—the minimum wage is to be based on what should be paid to the lowest grade of efficient clerical abour, either generally or in a particular class—and (2) to provide for a ower rate in the case of clerks who are aged, infirm, or slow, and unable to earn the prescribed wage.

The amount shall be binding on all persons within the locality for a period of not less than one nor more than three years.

Coal Mines Regulation Act.—No. 40 amends the Act of 1902, and prescribes certain rules for the ventilation of mines.

3. QUEENSLAND.

[*Contributed by the late* W. F. CRAIES, ESQ.[1]]

Acts passed—27.

Demise of the Crown.—1 Geo. V. No. 21 [2] provides that the holding of any office under the Crown shall not be affected, nor any fresh appointment be rendered necessary, by the demise of the Crown, nor the retaking of any oath of office. The Act takes effect as from the demise of Edward VII.

Representation of the People.—1 Geo. V. No. 3 [3] provides that the Legislative Assembly of Queensland shall consist of seventy-two members elected by the voters of seventy-two single-member electoral districts into which the State is to be divided by Commissioners appointed under the Act.

[1] Owing to the lamented death of Mr. Craies his contributions to this Review have not had the advantage of his revision.

[2] See N.S.W. No. 57 of 1901.

[3] This Act repeals the Electoral Districts Acts of 1887 and 1892.

The basis for the division is ascertainment of the quota of electors by dividing by seventy-two the number of electors on the electoral rolls on January 1, 1911. The Commissioners may not depart from the quotient by more than one-fifth more or one-fifth less; but subject to this they may adopt a margin of allowance. In making the divisions the Commissioners are to keep in view community or diversity of interests, means of communication, physical features, and the area of proposed districts not comprising any part of a city or town.

The Commissioners after preparing and advertising their proposals and considering all objections and suggestions had to submit a final report as to the names and boundaries of electoral divisions, which when gazetted became the electoral districts of the State. The Act also provides for provisional electoral rolls, the revision of the list of electors and subsequent adjustment of electoral districts on change of population.

Education.—An Act of 1908[1] directed the taking of a referendum poll on the question whether religious instruction should be given in State schools. The result of the poll having been in favour of the scheme of religious instruction, 1 Geo. V. No. 5 amends the Education Acts, 1875 to 1900, by making provision for religious instruction in State schools during school hours. The amending Act strikes the word "secular" out of certain sections of former Acts and provides as follows:

> In addition to the subjects of instruction enumerated in the last preceding section, instruction shall, in accordance with regulations in that behalf, be given in the primary schools *during school hours* in selected Bible lessons from a separate reading-book, to be provided for the purpose; but such instruction shall not include any teaching in the distinctive tenets of any religious society or denomination.
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> Moreover, any minister of religion shall, in accordance with regulations in that behalf, be entitled *during school hours* to give to children in attendance at a primary school who are members of the religious society or denomination of which he is a minister religious instruction during one hour of such schoolday or schooldays as the committee or other governing body of such school are able to appoint.
>
> Provided always that notwithstanding anything in this section contained, any parent or guardian shall be entitled to withdraw his child who is in attendance at a primary school from all religious instruction in such school, if such parent or guardian notifies to the head teacher that he wishes so to do.

Margarine.—5 Geo. V. No. 9[2] regulates the manufacture and sale of margarine or other mixtures prepared in imitation of or in substitution for butter. Manufacturers are required intimately to mix with every thousand parts of margarine at least one part of dry starch of Queensland arrowroot (*Canna edulis*) and with every hundred parts of margarine at least five parts of sesame oil (*Sesamum indicum* or *Sesamum orientale*) or such other substance as ay be approved, and the sesame oil so added must give a chemical eaction prescribed in the Act. All margarine imported or introduced into e State must contain the above prescribed percentages.

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[1] 8 Ed. VII. No. 11. See Journal, N.S. vol. x. p. 333.

[2] It contains some provisions borrowed from Acts of Victoria, 57 Vict. No. 1331, New Zealand Consolidated Act, No. 111 of 1908.

Meat and Dairy Produce.—5 Geo. V. No. 10 amends the Meat and airy Produce Encouragement Acts, 1893 to 1904,[1] as to claiming certificates f payment of tax and repayment of the amounts specified therein to the olders of the certificates and the application of the surplus of the Meat and airy Fund in aid

(1) of the chilled meat industry by grant, loan, or guarantee of insurance;
(2) of any industry which would help to get rid of surplus stock;
(3) of the Disease of Stock Fund established in 1896.

State Railways.—Three Acts deal with State railways. 5 Geo. V. Nos. 1 and 12 authorise the construction of new railways, over 1,700 miles in ngth, intended

(1) to run across Western Queensland;
(2) to link up the lines from various coast ports with the new western line;
(3) to make a continuous system of lines along the coast of Queensland.

The Acts contain maps delineating the route of the proposed lines and dicating the existing public and private lines.

5 Geo. V. No. 14 authorises the raising of a loan of nearly £10,000,000 for e construction of the above lines and other purposes; the money to be ised (within or without the State) by debentures or inscribed stock as determined by the Governor in Council to be secured on the Consolidated evenue of the State and to bear interest at a rate not exceeding 3½ per ent. The Act provides for a sinking fund and charges interest and the ntribution to the fund on all the revenues of the State.

Crown Land.—The bulkiest act of the year is one (1 Geo. V. No. 15) hich consolidates and amends the law relating to the occupation, leasing, d alienation of Crown land. It repeals twelve whole acts, part of another, d contains 211 sections and five schedules. From the annotations to the ctions it would seem that the statute is a consolidating measure making ly small amendments in the law. One extension deals with land infested ith noxious plants. It is usual now to insert a clause requiring the lessee destroy them, but lessees under a lease without any such provision "may ake application in writing to the Minister that the term of his lease may extended in consideration of his destroying all noxious plants" on his lding and keeping it free from them.

The second schedule, covering 190 pages, is a miniature Domesday of e State without the names of the leaseholders, and referring only to Crown nds.

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[1] 4 Ed. VII. No. 18. See *Legislation of the Empire*, vol. i. p. 530.

Animals.—5 Geo. V. No. 17 amends the Native Animals Protection Act, 1906.[1]

Protection.—The amending Act provides for the creation by proclamation of reserves for the protection and preservation of specified classes of native animals falling within the Act. It also provides for the issue of permits to trappers of opossums and native bears. The possession of cyanide of potassium is forbidden to trappers.

Destruction.—5 Geo. V. No. 16 amends the Marsupial Boards Act, 1905,[2] by—

(1) extending the definition of dingo so as to include pure or cross-bred foxes (*Canis vulpes*);

(2) by limiting on the permits the areas in which a scalper may carry on his occupation;

(3) by forbidding the use of cyanide of potassium for the destruction of marsupials or dingoes.

It also deals with the payment of the State contribution in aid of the Marsupial Boards, and provides for discontinuing scalping in districts where the diminution of marsupials and dingoes renders it safe to discontinue.

Local Authorities.—5 Geo. V. No. 22, an Act of sixty-one sections, amends in numerous details the Local Authorities Act of 1902.[3] The only details calling for special notice are (1) a veto on employing aliens on municipal tramway or omnibus lines unless they have passed an examination in English; (2) prohibition of plümping at municipal elections by requiring the voter to vote for the full number of candidates to be elected.

Judicial Proceedings.—5 Geo. V. No. 23 is intended to make better provision for the trial of commercial causes in the Supreme Court.

The amount of party and party costs which may be ordered to be paid by the unsuccessful party in a commercial cause shall not exceed 52 guineas. The parties may agree that the verdict of the jury or the decision of the judge in such a cause shall be final.

Royal Commissions.—5 Geo. V. No. 26 lays down a general rule as to the power of persons appointed by or under the authority of His Majesty or the Governor in Council to make any inquiry with respect to any matter.

Power is given to send for witnesses and documents, punishing failure to attend or produce documents, or refusal to be sworn or give evidence. The Commissioners in the exercise of their duty are to have the same protection and immunity as judges of the High Court; and witnesses summoned to attend or appearing before a commission are to have the same protection and be subject to the same liabilities as witnesses in a cause tried in the Supreme Court. Provision is also made for making a scale of allowance to witnesses and payment of the sums allowed out of the State Treasury.

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[1] 6 Ed. VII. No. 5. See *Legislation of the Empire*, vol. i. p. 538.

[2] 5 Ed. VII. No. 8. See *Legislation of the Empire*, vol. i. p. 534.

[3] 2 Ed. VII. No. 19. See *Legislation of the Empire*, vol. i. p. 522.

Mines.—5 Geo. V. No. 24, an act of sixty-nine sections, supplements he Mines Act of 1898[1] as to regulation of mines. In the provisions for their inspection it is enacted that "the miners employed in a mine may, at their own cost, once in every month, appoint two of their number, or any two persons who are practical miners, to inspect the mine; and the persons so appointed shall, on giving notice to the manager, be allowed to inspect every part of the mine, and all its machinery and appliances." Miners thus employed continue to be workers within the meaning of the Workers' Compensation Act, 1905.[2] *Semble*, miner inspectors have the same rights as other inspectors in directing attention to and remedying defects. "Any person working in a mine may make, either personally or by a representative, complaints to an inspector that any thing or practice connected with the mine is dangerous, and the inspector shall take such steps as he deems necessary to investigate and remedy the matter. The name of the informant shall not be divulged." In respect to the management of mines it is required that no person shall be qualified to be a manager unless he holds a certificate as a mine manager granted by an examining body appointed by the Governor in Council. Further, "the occurrence of any accident in or on a mine shall be *primâ facie* evidence of negligence on the part of the owner and manager."

In connection with the procedure in case of accidents it is provided that "when ten or more persons are ordinarily employed in or about a mine, ambulance or stretchers, with splints and bandages, shall be kept at the mine ready for immediate use in case of accident, unless there is an ambulance corps established within a radius of two miles from the mine."

Sunday work, except that which is necessary to prevent danger to the mine, is forbidden.

An elaborate set of rules dealing with the working of a mine is embodied in a schedule to the Act.

Water.—5 Geo. V. No. 25 declares the rights in natural water and the property in the bed and banks, and makes better provision for the conservation and utilisation of water for industrial, irrigation, and other purposes, and for the construction, maintenance, and management of works for such purposes. It vests in the Crown for all purposes whatsoever the right to the use and flow and to the control of the water at any time in

(*a*) any watercourse or a river, stream, or creek in which water flows in a natural channel, whether perennially or intermittently;
(*b*) any lake;
(*c*) any spring of water not being artesian naturally rising to and flowing over the surface of the land;
(*d*) any artesian well; and
(*e*) any subterranean source of supply.

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[1] No. 24 of 1898. See *Legislation of the Empire*, vol. i. p. 499.

[2] No. 26 of 1905. See *Legislation of the Empire*, vol. i. p. 536.

This vesting is subject to the following restrictions:

It does not apply to the water of a spring till it passes beyond the boundaries of the land belonging to the owner of the land whereon the spring exists, nor to any artesian well or subterranean source of water from which the water does not flow naturally but has to be raised by pumping or other artificial means.

When a watercourse or lake forms wholly or in part the boundary of land alienated by the Crown before the commencement of the Act the bed and banks thereof are to be deemed to have remained in the Crown, and not to have passed into the land alienated. After the Act is passed in conveyance or alienation of the adjoining lands the bed and banks of the watercourse remain in the Crown, even if the same person owns the land adjacent to both banks.

OTHER ACTS.

Nos. 1, 2, 4, 13. Appropriation.
Nos. 6, 8. Harbour Board Loans, Rockhampton and Townsville.
No. 7. City of South Brisbane Loan.
No. 14. Finance.
No. 18. Rabbit Boards Acts Continuation.
No. 19. Brisbane Traffic.
No. 20. Queensland Patriotic Fund (administration of moneys collected during South African War).
No. 27. Private Railway Act (Bundaberg).

4. SOUTH AUSTRALIA.[1]

[*Contributed by* A. BUCHANAN, ESQ.]

Acts passed—General, 36; Private, 2.

Constitution.—The Constitution Amendment Act, No. 1029 of 1910, reduces the number of members of the House of Assembly from forty-two to forty (s. 4) and makes the other necessary amendments consequent upon the transfer of the Northern Territory to the Commonwealth (ss. 5, 6); vacates the seats of the two sitting members for the Northern Territory (s. 7), but continues their parliamentary salaries until the expiration of the existing Parliament (s. 8); and reduces the quorum of the House of Assembly from twenty to fifteen.

The Payment of Members Referendum Act, No. 1025 of 1910, provides for the taking of a referendum on the question: "Are you in favour of increasing the payment of members of Parliament to £300 per annum?"

The Administration of Acts Act, No. 1000 of 1910, gives power to transfer by proclamation the administration of any Act from the Minister therein specified or indicated to any other Minister, which last-mentioned Minister shall be the body corporate in those cases where a body corporate is constituted.

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[1] The legislation of the year 1910, being that of the first session of the twentieth Parliament.

Closer Settlement.—Act No. 1019 of 1910 raises the limit of the amount that may be expended in any two financial years in the repurchase of land for closer settlement from £300,000 to £600,000 (s. 4), and provides that the subdivisions for sale may be an unimproved value of £4,000 in lieu of £2,000, or, in cases where the improvements are of disproportionate value, £5,000 in lieu of £4,000 as theretofore (s. 5). Power is given to the Commissioner in cases of hardship to reduce the rate of interest during successive terms to £2 and £3 per cent. respectively and to postpone all payments on account of purchase money during a term of four years (s. 7).

Act No. 1032 of 1910 extends the power of the Government to acquire for closer settlement purposes lands outside any city, town, or township where it forms part of an aggregate holding by one individual of over £20,000 unimproved value and of which at least one-third of the arable portion is not annually cultivated or lands adjacent to the River Murray suitable for reclamation (s. 4). When notice of intention to acquire lands has been given, subsequent dealings therewith within two years and six months are all subject to such notice (ss. 7-11). An owner may reserve lands up to £20,000 unimproved value as far as possible in one block (s. 13), or the owner may require the whole estate to be taken (s. 14). Failing agreement the price to be paid for land taken is to be fixed by arbitration (s. 17), provided that where the owner purchased for a money consideration the price shall not be less than that money consideration (s. 18).

Advances for Homes.—Act No. 1018 of 1910 constitutes a fund of moneys to be voted by Parliament and repayments thereof (s. 8), to be administered by the Board of Trustees of the State Bank (s. 3), who for the purposes of the Act are made a body corporate (s. 5). Out of the fund the Board may make an advance not exceeding £500 to any person having an income of not more than £300 per annum, arising as to at least four-fifths thereof from his actual personal exertion, to an extent not exceeding four-fifths of its value for the erection or purchase of a dwelling-house as a house for himself and his family or in clearing off existing mortgages on such a home (s. 11). Every such advance shall be secured by a first mortgage of the home (s. 14), and shall be repayable, principal together with interest at 5 per cent., by equal monthly or quarterly instalments spread over such term of years being not less than seven years nor more than forty-two years, but with a right to pay off the whole or any part of the balance owing at any time (s. 16), and with a provision for a rebate in the rate of interest to 4½ per cent. upon payment of instalments within seven days of the due date (s. 17). Holdings whilst subject to an advance are not without the consent of the Board to be let or sublet (s. 22) or alienated (s. 23).

Murray River.—Act No. 1023 of 1910 incorporates the Commissioner of Public Works with power to construct and maintain works for impounding, conserving, regulating, utilising, and controlling the waters of the River Murray, including, subject to agreement with New South Wales, works at Lake Victoria in that State.

Local Government.—Act No. 1033 of 1910 provides machinery by which local government works which are not capable of being wholly carried out within the limits of one municipality or district council may be carried out by a controlling authority exercising the powers of and binding the constituent corporations and councils. Constituent local government bodies are to be afforded an opportunity of considering any scheme proposed, and, if necessary, a reference to special magistrates for investigation and report is to be had before ministerial approval (Part II.). The powers of regulating street traffic are enlarged and extended (Part III.). Control over the establishment of hospitals is given (ss. 31-3). Persons in receipt of public relief may be enrolled as citizens (s. 34).

The Land Value Assessment Act Amendment Act, No. 1007 of 1910, empowers a municipal corporation to make its own assessment, without adopting, as provided by the principal Act of 1893, the Government assessment made for general taxation purposes (s. 3), and limits the rating power for general and special rates to raising an amount equal to that which could be raised for similar purposes on an assessment upon annual values under the general provisions of the Municipal Corporations Act, 1890.

Holidays.—Act No. 1010 of 1910 prescribes certain public and bank holidays, and as to Royal anniversaries and Foundation Day (January 26) provides that, unless they fall on a Monday, the following Monday shall be observed, and as to New Year's Day and Commemoration Day (December 28), that when either falls on a Saturday or Sunday the following Monday shall be observed.

Recreation Grounds.—Act No. 1003 of 1910 exempts all parks and public gardens and pleasure grounds from all general, special, and local taxation so long as they are used exclusively for the use and enjoyment of the public.

Places of Public Entertainment.—Act No. 1002 of 1910 extends the definition of "place of public entertainment" to include "any theatre, concert-room, menagerie, circus, skittle- or bowling-alley, and any place used for dancing or in which dancing is taught other than a dwelling-room in a private house," and also to include any other place, whether enclosed or unenclosed or partly enclosed, whereat amusement for the public is provided (s. 3 (1)). The Chief Secretary may appoint inspectors with the fullest powers of entry and inspection (s. 5). Regulations may be made by the Governor, subject to a power of disallowance by Parliament, to regulate the hours of opening, the granting of permits by the Chief Secretary for Sunday entertainments, the lighting and heating arrangements, precautions against fires, exits, seating, periodic inspections, sanitation (s. 6); opening or using on Sunday without a permit, or contrary to the conditions of the permit, if any, render the proprietor liable to a penalty of £50.

Destitute Persons.—The Inter-State Relief Act, No. 1008 of 1910, provides machinery for summoning persons in another State liable to support destitute persons in South Australia (Part II.), and for enforcing through an official collector in South Australia maintenance orders made in another State against persons resident in South Australia (Part III.). The Act is to be brought into operation by Proclamation as regards such States as enact reciprocal legislation. Provision is made for a collector in the collecting State remitting to the collector of the State where the destitute person is resident for payment to the proper persons (s. 18). All the expenses of administration are to be paid out of moneys voted by Parliament (s. 26).

Liquor Trade.—Act No. 1030 of 1910 abolishes "the *bona fide* traveller" as a person to whom liquor may be supplied during prohibited days or hours.

Secret Commissions.—Act No. 1006 of 1910 enacts, with extensions, the provisions of the Prevention of Corruption Act, 1906,[1] of the United Kingdom, and closely follows the lines of the corresponding Acts of Victoria of 1905[2] and Tasmania of 1906.[3] It makes the receipt or solicitation of a secret commission by an agent (s. 4), or the gift or offer of a secret commission to an agent, a misdemeanour (s. 5); secret gifts or offers to relations, parties, or employees of an agent are deemed to have been given to the agent, and receipts by such persons are deemed to have been received by the agent, unless absence of consent, knowledge, and privity be proved (s. 3); the giving of false or misleading invoices to an agent, or the receipt of such by an agent for the purpose of misleading the principal, is a misdemeanour (s. 6); to give or receive a secret commission in return for advice given to another person to induce that other person to enter into a contract with a third person or to lead to the appointment of a third person as a trustee, or to offer or solicit a secret commission for such advice, is a misdemeanour (ss. 7 and 8); for any person to offer a secret commission to a trustee, or a trustee to accept a secret commission for himself or any other person without the consent of the beneficiaries or of a judge of the Supreme Court as a return for the appointment of any other person as trustee in his place, is a misdemeanour (s. 9); aiding or abetting in any offence against the Act, whether within or without South Australia, is a misdemeanour (s. 10); and a director, manager, or officer of a company doing without authority what if authorised would be a contravention of the Act is guilty of a misdemeanour (s. 11). The penalty for a misdemeanour under the Act is in the case of a company not to exceed £250, or in any other case not to exceed £100, in addition to the amount or value of the secret commission (s. 12). Trifling or technical cases may be withdrawn from the jury (s. 13). Provision is made for the protection of a witness who gives evidence incriminating himself (ss. 14, 15). Custom of itself is not to be a defence (s. 16); the burden of proof that a gift is not a secret commission is placed on the accused (s. 17). A prosecution must be commenced within six months of the discovery of the offence and within two years of its commission (s. 18), and cannot be commenced without the consent of the Attorney-General.

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[1] 6 Ed. VII. c. 34. See *Legislation of the Empire*, vol. i. p. 135.

[2] No. 1974. See *Legislation of the Empire*, vol. ii. p. 142.

[3] No. 21. See *Legislation of the Empire*, vol. ii. p. 79.

Industrial.—The Factories Act Amendment Act, No. 1920 of 1910, is a measure of fifty clauses making numerous amendments in the principal Act of 1907.[1] The definition of "factory" is made more extensive (s. 4), a new definition of "apprentice" is substituted (s. 5), and the definition of "improver" is amended (s. 6). When a Wages Board is unable or fails to exercise its powers, or cannot be constituted, the Court of Industrial Appeal is to exercise and discharge the powers and duties (s. 22). The Act makes additional provisions for the exhibition in factories of notices of the working hours (s. 38), for clearance room for machinery (s. 39), for weekly returns of overtime worked (s. 40), that apprenticeship shall determine not later than the age of twenty-one (s. 41), as to the contents (s. 42) and form of indentures of apprenticeship (s. 43), and against the victimisation of employees by reason of anything done in connection with a Wages Board (s. 45). A majority of not less than three-fifths of the employers and three-fifths of the employees in any trade not subject to a Wages Board may enter into an agreement limited to a defined locality with respect to any matters which would be within the jurisdiction of a Wages Board, if appointed, and transmit such agreement to the Minister (s. 48 (1)). After investigation and report by the Chief Inspector that such agreement has been signed by the due majorities (2), the Minister is to transmit the agreement to the Court of Industrial Appeals (3), which is to hear persons either in support of or opposition to the agreement and report whether the agreement is consistent with the Act and one which should be confirmed (4), in which case fourteen days after publication in the *Gazette* it is to take effect as if it were a determination of a Wages Board (5). Upon the resolution of both Houses of Parliament Wages Boards may be appointed for localities outside the metropolitan area (s. 50).

Friendly Societies.—Act No. 1021 of 1910 extends the objects of friendly societies to (1) providing medical attendance and medical comforts and medical dispensaries, and (2) establishing funds for guaranteeing the fidelity of officers (s. 4), and enables different societies and branches to co-operate for such objects (s. 5) but with a right to withdraw from any such co-operative agreement (s. 6).

Pest Prevention.—The Vine, Fruit, and Vegetable Protection Amendment Act, No. 1005 of 1910, extends the powers of preventing the introduction, removal, and growth of any disease, or insect or plant likely to spread any disease or insect (s. 6), of inspection (s. 10), and of destruction and eradication (ss. 8 and 11).

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[1] No. 945. See *Legislation of the Empire*, vol. ii. pp. 54-6.

The Insecticides Act, No. 1013 of 1910, regulates the sale of insecticides and fungicides. Standards of qualities may be fixed (s. 3) and enforced (s. 4), constituents are to be stated upon sale (s. 5), in the invoices (s. 6), and upon the packages (s. 7), and non-compliance will justify refusal of delivery by the purchaser (s. 9). Inspectors and analysts may be appointed with power of taking samples for analysis (ss. 10-13), and a buyer may procure an analysis (s. 14). The results of analyses, with names and addresses of the vendor, may be published (s. 15).

Northern Territory Aboriginals.—Act No. 1024 of 1910 erects a department charged with the administration of the Act, and to exercise a general supervision and care over all matters affecting the welfare of aboriginals, and to protect them against injustice, imposition, and fraud (ss. 4-10). The removal of aborigines from their districts except by parents is prohibited, unless the consent of the Protector be obtained and security given for the expense of return (ss. 11, 12). Reserves and institutions may be proclaimed (ss. 13-21). Intermarriage with a female aboriginal, unless with the consent of the Protector, is made an offence under the Act. Aborigines and female half-castes are not to be employed by unlicensed persons (ss. 23-33). Blankets and clothing supplied by the Government to aboriginals remain the property of the Crown (s. 34). The carriage of firearms by unlicensed aboriginals, unless travelling under lawful employment, is prohibited (ss. 35-41). The frequenting of aboriginal camps is prohibited (s. 42), such camps near town ships or public-houses may be removed (s. 45), aboriginals or half-castes loitering in townships or near public-houses may be ordered away (s. 44), and areas may be proclaimed which they, unless in lawful employment, are prohibited from entering (s. 45). The Chief Protector is made curator of the property of aboriginals (s. 46). Maintenance of half-caste children may be recovered from the father (s. 47).

5. TASMANIA.

[*Contributed by* B. C. FERRERS, ESQ.]

Acts passed—71.

Few enactments of general interest were passed by the Tasmanian Legislature during the year 1910.

Offences Against the Person.—Act No. 4 amends the Act of 1885, and makes more stringent provisions against the defilement of young persons.

Under s. 4 it is a criminal offence for a householder to allow his premises to be used for an immoral purpose by a boy under the age of eighteen years.

Ancient Lights.—After the commencement of the Ancient Lights Declaratory Act (No. 5), no right to the access or use of light to or for any building is capable of coming into existence by reason of prescription only.

Resumption of Land for Public Purposes.—No. 11 is an important Act providing for the acquisition by the Crown of land required for public purposes.

S. 5 empowers tenants in tail or for life, guardians, trustees, executors, and other persons under disability to sell land to the Crown.

Part II. (ss. 10-22) empowers his Majesty, or the Governor, or the Governor in Council, or any Minister of the Crown to take any land required for any public work.

Part III. (ss. 23-9) empowers the Minister to examine and temporarily occupy any lands: rent is to be paid to the owner during temporary occupation.

Compensation is provided for by Part IV.

Fisheries.—The Fisheries Act of 1889 is amended by No. 18, and severe penalties imposed on persons guilty of offences against the Fisheries Act.

Under s. 4 any boat the crew of which is engaged in illegal fishing is forfeited, and becomes the property of the Commissioners. The burden of proving the illegality of any seizure made for the alleged violation of the Act lies on the owner of the boat or other article forfeited (s. 19).

Pharmacy.—The principal Act of 1908[1] is amended by Act No. 19. Under s. 11 every pharmaceutical chemist must either personally superintend his business or employ another registered chemist to supervise the business on his behalf.

Evidence.—No. 20, a lengthy statute of 149 sections, consolidates and amends the statute law respecting evidence.

Part II. deals with the means of obtaining evidence.

Under s. 7 the Supreme Court or a Judge may order the examination of any witness on interrogatories or otherwise.

SS. 14-22 provide for the taking of evidence by Royal Commissions.

S. 23 empowers Select Committees of either House of Parliament to examine witnesses upon declaration.

Part III. provides for means of proof and admissibility of evidence.

SS. 33-40 contain provisions with regard to the proof of entries in bankers' books similar to those of the English Act of 1879.[2]

Under ss. 41-2, when notice to admit any telegraphic message has been given in any civil proceedings, the production of such message is *primâ facie* evidence of the authenticity of the same.

Documents and proceedings generally are dealt with in ss. 48-68.

The competency and compellability of witnesses are regulated by ss. 82-93.

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[1] No. 33 of 1908. See Journal, N.S. vol. x. p. 338.

[2] 42 & 43 Vict. c. 11.

The provisions of the Criminal Evidence Act, 1898[1] (England), with regard to the competency of the accused or his wife as witnesses in criminal cases, and with regard to the cross-examination of such witnesses as to the previous convictions or bad character of the accused, are reproduced in s. 85. Communications made by husband to wife or *vice versâ* during marriage are privileged.[2]

The question whether clergymen, and particularly whether Roman Catholic priests, can be required to disclose confessions made to them professionally, is undecided in England. S. 96, however, of the Tasmanian Act enacts that no clergyman of any church or religious denomination shall divulge any confession made to him in his professional character, except with the consent of the person who made such confession.

S. 104 makes unlawful the printing or publishing of any question which the Court has disallowed as being indecent or scandalous.

In criminal cases, a confession tendered in evidence shall not be rejected on the ground that a promise or threat has been held out to the person confessing unless the judge is of opinion that the inducement was likely to cause an untrue admission of guilt (s. 111).

SS. 114-22 contain provisions as to evidence in particular cases, *e.g.* charges relating to money, actions for breach of promise and seduction, bigamy, etc.

Part V. (ss. 123-35) deals with oaths, affirmations, and depositions. The practice of "kissing the book" is to be discontinued (s. 124).

Inflammable Oils.—The keeping, conveying, and sale of inflammable oils and carbide of calcium are carefully regulated by No. 21.

District Justices.—The fact that a justice is a ratepayer, or is interested in the concerns of the corporation of his city or municipality, is to create no disability in him from acting as justice in any matter relating to such city or municipality. This is the effect of an Amending Act (No. 27).

Motor Traffic.—No. 28, by an amendment of the law, empowers the Governor to make special regulations in the case of motor vehicles temporarily brought into the State (s. 2).

The Commissioner of Police may grant permission to motor or cycle clubs to hold contests on specified public roads at certain times (s. 3).

Landlord and Tenant.—The Principal Act of 1874 is amended by No. 47. If distress is levied on the goods of an under-tenant or lodger, he may make a declaration that the immediate tenant has no property in the goods distrained. A landlord who, after being served with such a declaration, proceeds to distrain, is guilty of an illegal distress (ss. 5, 6).

Under s. 10 sewing-machines, knitting machines, typewriting machines, and mangles are exempted from distress in certain cases.

Gold.—The Tasmania Legislature has found it necessary to pass yet another Act (No. 48) regulating the buying of gold. The Gold Act, 1908,[1] is repealed. Many of its provisions are reproduced, others are amplified and extended.

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[1] 61 & 62 Vict. c. 36. See *Legislation of the Empire*, vol. i. p. 17.

[2] S. 94. See 16 & 17 Vict. c. 83, s. 3, and 61 & 62 Vict. c. 36, s. 1, sub-s. (*d*) (England).

Contagious Diseases (Cattle).—An Amending Enactment (No. 50) aims at preventing the importation of diseased cattle. All cattle brought into the State are to be accompanied by certificates showing that they are bred from herds that have been immune from disease for a period of three years (s. 6).

Payment of Members.—Tasmania has been in advance of the United Kingdom with regard to the payment of Members of Parliament. In 1900 it was enacted that members should be reimbursed of their expenses at the rate of £100 per annum: by an amending Act (No. 53) this amount is now raised to £150.

Interstate Destitute Persons' Relief.—No. 55 provides for the relief of persons whose relatives, liable to support them, reside in another State of the Commonwealth. S. 5 declares that whenever in any State an Act is in force containing provisions similar to those of this enactment, the Governor may proclaim that this Statute shall be in force as regards that State. Reciprocity is thus established.

Under Part II. a summons for relief issued in another State may be served in Tasmania.

Public Health.—The Act of 1903[2] is amended by No. 56. A medical practitioner may grant a certificate recommending the removal of any infectious case to a hospital (s. 4).

Factories.—No. 57 is a consolidating Statute.

Part II. provides for the registration of factories. The powers and duties of inspectors are defined in Part III. Sanitation and safety in factories are carefully provided for in Part IV.

Women and young persons are not to be employed continuously in any factory for more than five hours without an interval of at least an hour for a meal (s. 36).

Restrictions regarding the ages and working hours of employees engaged in certain manufacturing processes are made in Part VI.

Women, children, and young persons are not to be employed for more than forty-eight hours in one week (s. 51).

Part VII. refers to shops. Fifty-two hours in one week is the longest period for which women and young persons may work in any shop (s. 59).

Part VIII.—A minimum wage is fixed for every person employed in any capacity in a factory: 4*s.* a week for the first year of employment, 7*s.* for the second year, 10*s.* for the third, and so on by addition of 3*s.* a week for each subsequent year until 20*s.* is reached.

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[1] No. 41 of 1908. See Journal, N.S. vol. x. p. 340.

[2] No. 37 of 1903. See *Legislation of the Empire*, vol. ii. p. 70.

Wages Boards.—No. 62 is incorporated with the previous Act.

The Governor is to appoint Wages Boards—

(1) In respect of the preparation and manufacture of clothing and wearing apparel; and

(2) For any other trades in respect whereof both Houses of Parliament pass a resolution approving such appointment (s. 5). Every employer engaged in a trade in respect of which a Board is appointed is required by the Act to keep a record of the names, work, and wages of all persons employed by him and of various other matters: this record is to be produced to an inspector whenever demanded (ss. 7, 8). SS. 9-19 deal with the constitution of the Boards.

The main objects and duties of the Wages Boards are (*a*) to classify employees; (*b*) to determine lowest price or rate of payment; (*c*) to fix a maximum number of hours; (*d*) to prescribe forms of indenture of apprenticeship (ss. 20-26).

In the case of piecework, the Board may either determine the lowest prices or rates or may fix the lowest wages, prices, or rates, and allow the employer to fix the piecework prices on that basis. Piecework rates are to be based on the earnings of the average worker. It is an offence for an employer to offer a lower price or rate when a piecework rate has been fixed (s. 27).

In the case of aged, slow, or infirm workers the Chief Inspector may, under s. 28, grant licences to work at a wage less than that fixed by the Board.

Workers' Compensation.—The Workmen's Compensation Act, 1906 (England), is very closely followed by Act No. 66. The Tasmanian Act, however, applies only to persons employed in any *manual labour* where the remuneration does not exceed £156 per annum in any railway, factory, mine, quarry, or engineering work. Thus persons engaged in clerical work and domestic servants are not provided for, as is the case in England. The Act, however, may be extended to any industry to which its provisions are applied by resolutions passed by both Houses of Parliament (s. 2).

Railway Management.—The authority to carry out the Act of 1891 is vested in the Railway Commissioner, whose appointment and tenure of office are regulated by Part II. of an amending Act (No. 69).

The Commissioner is to have the management, maintenance, and control of every Government railway, and railway property vested in the Commissioner is not to be subject to rates, tax, or assessment (ss. 18, 19).

A yearly railways working account is to be presented by the Commissioner to Parliament (s. 26).

Part III. deals with the appointment of officers by the Commissioner.

Crown Land Purchasers' Reinstatement (No. 71).—Certain persons are reinstated as purchasers of Crown lands.

SUPPLEMENTARY LIST.

The following are Acts of a formal nature:
Nos. 1 and 23. Supply.
No. 25. Appropriation.
Nos. 43, 44. Inscribed Stock and Treasury Bills.
No. 45. Treasury Bills.
No. 54. Supplementary Appropriation.

6. VICTORIA.

[*Contributed by* C. J. ZICHY-WOINARSKI *and* A. G. BROWN, ESQRS.]

Acts passed—69.

Many of the public Acts passed in this session are not reviewed as being largely of local or private interest only.

Arbitration.—The Arbitration Act (No. 2265) does not deal with industrial disputes. It is an Act which mainly adopts for the State of Victoria the simplified practice and procedure in regard to arbitrations established by the British Arbitration Act of 1889.[1] It makes special provision for the conduct money and payment of the expenses of witnesses which are assimilated to the payments to witnesses at a trial in the Supreme Court; and it also specially provides that if any matters in any action in the Supreme Court are referred to an arbitrator or to a referee for report, his remuneration shall be fixed by the Court, and the Court is also to fix in what proportions such remuneration shall be paid. In other respects this Act is almost an exact copy of the English original.

Probate.—The Administration and Probate Duties Act (No. 2270) continues for a further period of twelve months (*i.e.* the period between December 31, 1910, and January 1, 1912) the rates at present existing of probate duty chargeable on real and personal property in Victoria of deceased persons.

Artificial Manures.—The Artificial Manures Act (No. 2274) stipulates that manures sold to the public shall contain certain proportions of ingredients and provides also for the official examination and analysis of manures and for the registration and publication of brands in connection therewith.

Bees.—The Bees Act (No. 2279) provides for the quarantine of areas affected with bee diseases and for the disinfection or destruction of diseased bees by inspectors and for penalties for contravention of Act or regulations.

Royal Commissions.—Royal Commissions of Inquiry are given further powers than already possessed by them, under the Commissions of Inquiry

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[1] 52 & 53 Vict. c. 49.

Act (No. 2249). Previously their power of ordering the production of documents was limited to public documents, and this Act empowers them to order also the production of private books, documents, or writings—subject of course to the usual privileged exceptions (s. 3). Power is given too to examine witnesses upon oath (s. 4.)

The penalty for non-attendance by a witness or for refusal to be sworn or to give evidence, or to produce documents, is also increased from a sum of not exceeding £20 to a fine not exceeding £50 or to imprisonment not exceeding six months. The enforcement of this penalty is to be by means of a report being made by the Chairman of the Commission to a Law Officer of the Crown, who may thereupon apply to a Supreme Court judge for an order to issue to the delinquent to show cause why he should not be dealt with for the offence (ss. 5-7). The scale of allowances to witnesses is a matter for regulation by the Governor in Council (s. 8).

Evidence.—The Bankers' Books Evidence Act (No. 2251) is practically a substitution of the Imperial provisions of 42 Vict. c. 11, for those of 39 & 40 Vict. c. 48, with slight modifications. It aims at simplifying the procedure in the use of the copies of entries in bankers' books.

It had been previously necessary in Victoria, before any such copy could be used in any legal proceeding, to give five days' notice in writing together with a copy of the entries to the other party, and this is no longer required. The Act makes the only conditions for the use of such entries to be the usual ones of the proof—

(*a*) that the book is in the custody of the bank and is one of its ordinary books and that the entry is in the usual course of its business, and

(*b*) that the copy has been examined with the original entry and is correct.

A modification also found in this Act is where a bank is itself a party to any legal proceedings. In such a case the other party is to be at liberty to inspect and to make copies of the original entries, and of the accounts from which the entries come, and of the cheques, bills, notes, and other vouchers in respect of which the entries were made.

Companies.—The Companies Act (No. 2293) is a consolidating and amending Act, based principally on the English Companies legislation.[1]

Criminal Law.—Three matters are dealt with by the Crimes Act (No. 2306):

1. Additional power is conferred to deal with the release from gaol of prisoners acquitted of crimes on the ground of insanity and ordered to be kept in custody during the Governor's pleasure. Previously a release of any such prisoner could be absolute only and was therefore not granted in doubtful cases of recovery. This worked to the disadvantage of such prisoners as had in all probability become sane but of whose complete sanity there was

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[1] 8 Ed. VII. c. 69.

any doubt. This Act confers power to release such last-mentioned prisoners upon probation to the care of their relatives or of charitable institutions, and if any of the conditions of the probation are broken, then any justice of the peace with the consent in writing of a law officer may summon the released prisoner to show cause why he should not be committed to custody, and the necessary orders may be made for that purpose.

2. Additional power is conferred upon the Governor to release any prisoner under any sentence of imprisonment or recognisances, with or without sureties, and the recognisances (1) *must* fix a period of good behaviour not less than the term of sentence then unexpired; (2) *may* contain conditions as to any or all of the following matters:

(*a*) supervision by a probation officer;
(*b*) prohibiting association with thieves or other undesirable persons or frequenting undesirable places;
(*c*) abstention from intoxicating liquor;
(*d*) securing the offender to lead an honest and industrious life.

The Act adds, of course, the necessary provisions for remitting the prisoner to custody upon breach by him of any of these conditions.

3. It amplifies the power of justices to issue search warrants by adopting practically the provisions contained in s. 569 of the Canada Criminal Code upon that subject.

Dentists.—The Dentist Act (No. 2257) amends the principal Act of 1899. "Dental Surgery" or "Dentistry" is defined as "the performance of any operation upon the natural teeth and their associate parts of a human subject or the construction or adjustment of artificial teeth for such subject" (s. 2).

In this Act it is provided that—

(*a*) no person who is not registered shall practise dental surgery or dentistry for fee or reward (s. 4);
(*b*) no person shall practise dental surgery or dentistry except in his own name (s. 5);
(*c*) no dentist shall authorise or permit a person not registered to practise dental surgery or dentistry for such dentist except under his personal supervision (s. 6).

This group of sections aimed at stopping men practising dentistry under colour of qualified persons' names without themselves being qualified. Apprentices doing necessary acts in their apprenticeship do not come under this ban.

Then there are some sections dealing with the use of certain titles. It is made an offence for a person, whether registered or not (but not for a dental institution recognised by the Dental Board of Victoria), to use, take, or have attached to his place of business the words "dental company," "dental institution," "dental hospital," "dental college," or the like. Again, there are some sections in this Act dealing with the rights as dentists of medical practitioners. In the past such practitioners had an unlimited right to practise dentistry, and this right is now practically abolished for the future. Medical practitioners conducting or carrying on a dental practice may apply within twelve months from the passing of the Act for registration and so preserve their vested interest. The Act also exempts from its ban any medical man who may perform any dental operation in the ordinary course of his medical and surgical practice and also the services rendered by any medical man when the services of a registered dentist are not reasonably available.

Lastly, the Act gives some recognition to people who had been practising dentistry for some time but were unregistered. Those practising dental surgery or dentistry in Victoria for a period of at least three years prior to this Act may apply within six months to the Dental Board to have their names recorded by such Board, but they, being so recorded, are not to put forth any statement that they are registered under the Act, but only that their names have been recorded, and upon passing certain examinations and paying certain prescribed fees they may obtain full registration as dentists.

Education.—The Education Act (No. 2301) authorises the Governor in Council to establish and maintain higher elementary and district high schools for the further education of pupils beyond the age of fourteen years, and authorises the establishment of evening continuation classes, attendance at which may be made compulsory, for the further education of pupils who have left the elementary school, and the establishment of trade classes and technical schools in centres of population, provision being made for taking over (subject to certain conditions) the present State-aided technical schools and managing them directly by the Central Department. The Act provides for a Council of Education (consisting of twenty members representative of the Education Department, the University, registered schools of technical education, of education in music and of industrial interests) to report to the Minister upon methods of or developments in public education in other countries and upon any matters specially referred to it.

Important amendments have been made in the existing law in relation to compulsory attendance in elementary schools. A certificate—the "Merit Certificate"—must be attained before a child can leave school before the age of fourteen, but even with the certificate of merit he must remain at school till thirteen years of age. The Act also provides that children must attend school during every school meeting of the week unless there is some "reasonable excuse," and that persons employing during school hours children not exempt from compulsory attendance may be prosecuted, and further provides that no person (including the parent of a child) may employ him before school hours for the purpose of gain if the nature and extent of the employment are such as to prevent him from profitably taking part in the school lessons of the day. Provisions of the compulsory attendance law are made applicable to children who are blind or deaf or dumb or physically or mentally defective, and in the case of these children the obligation to attend school applies to the period between seven years and sixteen years of age.

Habitual truants may be committed by a Court of petty sessions to a special school or truant school for day attendance, or may be taken charge of by the State and committed to an institution where they must remain until they attain the age of fourteen years.

School Boards of Advice have been abolished, and School Committees have been instituted to exercise general oversight over the school buildings and grounds, to carry out necessary work in connection with the buildings, and generally to stimulate interest in the school, etc. Provision is made in the Act for the inspection of schools other than State schools in order that the Minister of Education may ascertain whether in these schools efficient and regular instruction is being given up to the standard required by the Education Department, and the Governor in Council is also given power to make regulations relating to medical inspection of children attending the State schools.

Elections.—The Electoral Act (No. 2288) provides for a residential enrolment after six months' residence in Victoria, and one month's residence in an electoral district, and for an elector—except the holder of a freehold or leasehold estate—being entitled to enrolment only for the electoral district in which he resides.

As soon as practicable after the passing of the Act the Minister administering the Act is to direct an electoral canvass to be taken in every electoral district for the purpose of ascertaining what persons are qualified in respect of residence to be enrolled as electors for the Legislative Assembly; power is also given the Minister to cause a canvass to be taken from time to time. When making an electoral canvass a householder's schedule is to be left at every dwelling, and the occupier or person in charge of such dwelling must write therein the names of all persons residing at the dwelling who are qualified for enrolment; general lists of electors to be compiled from the results of the canvass; such lists of electors to be printed and open for inspection, and then subjected to revision by a police magistrate, and afterwards printed as rolls. The provisions of the existing law as to the purification and revision of rolls are included in the Act. Persons not enrolled on the general rolls would, on making written claim to the Electoral Registrar for the division in which they reside, have their names placed on the rolls. After the coming into force of the first general rolls, annual general lists are to be prepared on February 1, and after revision come into force as rolls on July 1 of each year.

Provision is made for an arrangement with the Commonwealth being entered into for the joint preparation of rolls by the State and Commonwealth, so that the same rolls could be used for both Commonwealth and State Assembly elections.

Electors for the Assembly would not be permitted to vote in any division other than that in which they reside, except as mentioned below, or more than once at any election.

The roll to be used at an Assembly election would, in addition to the names on the printed rolls, also include the names of all persons whose names had been added thereto since printing, or who had made claims for enrolment before or on a day being thirty days before the expiration or dissolution of the Assembly, or the day on which the seat of the member became vacant.

The hour of closing the poll at elections throughout Victoria is fixed at 7 o'clock p.m., thereby making the closing hour the same for both Council and Assembly elections. It is also provided that all electors present in a polling booth at 7 o'clock p.m. should be permitted to vote.

Power is also given the Governor in Council to appoint the same polling place for adjoining divisions; provision is made for the issue of a second ballot paper if the first is spoilt; canvassing at or near polling places is prohibited.

On depositing the sum of £25 a defeated candidate may apply, within three days after the declaration of the poll, for a recount of the votes at any election.

The voting by post provisions are continued, and are substantially those at present in force with certain amendments, among which are the following: The publication of a notice to electors, and the condition restricting voting by post to electors who appear from the rolls to reside in the district or province, are omitted; power is given the Governor in Council to declare certain electoral divisions to be "mountainous" divisions, so that electors residing therein, at least three miles from the nearest polling place, may vote by post; returning officers are to deliver or post ballot papers to applicants, and voters, after recording their votes, to themselves post their ballot papers to the returning officers.

Any person required under the Act to sign his name otherwise than as a witness who is unable to write may make his distinguishing mark. For the purpose of carrying the Act into effect, power is given the Governor in Council to make regulations. Only so much of the Bill as would be necessary for preparing the first rolls is to come into force immediately on the Bill becoming law. The remaining provisions would become operative on a day to be proclaimed as the day on which the first special general rolls come into effect.

The Bill provides also that any person who is possessed (1) of a freehold qualification or (2) of a leasehold qualification under an unexpired lease originally created for any term of not less than one year, and whose name appears in respect of either such property qualification on a municipal roll or separate voters' roll of any municipal district, may, on making claim to the Electoral Registrar for the division in which his property is situate, have his name inserted in the roll for that division, in addition to being enrolled for the division in which he resides, but not to be enrolled on more than two general rolls. Electors are not to vote more than once at an election.

Factories.—The Factories and Shops Act, 1910 (No. 2291), has for its object to regulate the number, or proportionate number, of apprentices and improvers who may be employed in a factory, etc., and to provide that wages of apprentices shall, notwithstanding the determination of any special board, be not less than the amount stipulated in the indentures.

The Factories and Shops Act No. 2 (No. 2305) makes important additions in factory legislation—grants powers to authorise by resolution of Parliament the Governor in Council to appoint wages boards for any process, trade, or occupation, either alone or in conjunction with others, for any branch of any trade; enables the Governor in Council to define the parts of Victoria over which wages boards shall have jurisdiction, and both in respect of trades already brought under and to be brought under the Factories and Shops Act to confine, if he thinks fit, the scope of wages boards' determinations to cities, or to apply such determinations to the whole or any part of the State.

Girls under fifteen years of age—subject to certain exemptions—and boys under fourteen years of age must not be employed in factories; the hours of carters are restricted, and an annual trade holiday is provided for employees in the brushmaking, carpentering, coachbuilding, coopering, furniture, and sawmilling factories, and a weekly half-holiday for watchmen. The Act also enacts that persons over twenty-one years of age may be apprenticed, and that all outworkers doing piecework in the clothing trade must be registered, and that such piecework must not be given to unregistered outworkers.

Gold Buyers.—The Gold Buyers Act (No. 2292) makes amendments in the earlier Act of 1907,[1] which experience of the last-named Act had shown to be necessary.

The Savings Bank Commissioners and the School of Mines are by this Act authorised to become buyers of gold as well as banks and other licensed persons (s. 2).

A statutory duty is cast upon licensed gold buyers before buying gold from any person to assure themselves that such person is entitled to sell gold, and to require, with certain exceptions, such person to produce a certificate from some well-known respectable person that he believes the seller got it honestly (s. 15).

The penalties of the earlier Act are made more stringent. A minimum of £2 and a maximum of £300 are imposed, and imprisonment is made the only penalty for the offence of buying gold without being licensed, although in cases of merely technical or trifling offences the power in magistrates to suspend a sentence on sureties for good behaviour being obtained may be used (s. 22).

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[1] No. 2138. See *Legislation of the Empire*, vol. ii. p. 162.

Power is conferred too upon licensed gold buyers to buy gold that has been obtained outside the district for which the licence exists (s. 23).

A temporary gold-buyer's licence may be issued to the clerk or deputy of a licensed gold buyer where, owing to illness or other good cause, the gold buyer is unable to act (s. 25). And provision is made, too, for the case of licences lost or destroyed (s. 30).

Provision is made for permitting the smelting of gold obtained by registered prospectors (s. 29), and for the smelting of gold by the registered foreman of a testing plant (s. 28).

A new departure is made in requiring buyers of wrought gold at its metal value to be licensed, and to observe a number of stringent conditions as to the purchase and as to making necessary entries in a book to be kept for the purpose (s. 31).

A similar departure requires buyers of precious stones to be licensed: "precious stones" meaning such kinds or classes or qualities of precious stones as may be notified in the *Government Gazette* from time to time (s. 32).

The amount of licence fees is reduced (s. 33).

It is made incumbent on persons selling gold to the Mint or exporting gold to deliver particulars of the gold to the Mines Department. The Mint as an act of courtesy used to give such information to the Department itself; now it is the duty of the seller to give it (s. 36).

Power is taken, too, to issue a search-warrant to search premises for gold which is reasonably believed to be unlawfully upon premises or in possession of any one, or to search for any crushing, smelting, or assaying appliances believed reasonably to be unlawfully in the possession or under the control of any person. A member of the police force must swear an information to procure the issue of the warrant (s. 38).

No person is to be employed to assist the police in obtaining a conviction who has at any time been himself convicted of any offence punishable by imprisonment only or of any offence under the Gold Buyers Acts.

Homing Pigeons.—The Homing Pigeons Act (No. 2258) is a measure for the better protection of "homing pigeons," defined as pigeons "used as bearers of messages or as racing pigeons, and which have affixed or attached to either or both legs a rubber or metal ring."

A penalty of £5, together with a liability to pay damages up to the full value of the pigeon, is imposed on every person other than the owner who shoots, kills, wounds, or in any way destroys a homing pigeon (ss. 3 and 4). A similar penalty and liability is imposed on any person who enters enclosed land or premises in pursuit of homing pigeons (s. 5).

The Act is not to limit or abridge any other civil or criminal proceedings in respect of pigeons.

Land Tax.—The Land Tax Act, 1910 (No. 2284), provides for a uniform tax of one halfpenny in the £ on the unimproved value as assessed. No tax is imposed unless the unimproved value of the land exceeds £250; but where the unimproved value exceeds the amount of the exemption of £250, the exemption shall diminish at the rate of £1 for every £1 of such excess, so as to leave no exemption where the unimproved value amounts to or exceeds £500. Produce from land of £5,000 unimproved value exempt from income tax and maximum income tax as regards unimproved value of land to be as follows:—£5,001 to £6,000, £5; £6,001 to £7,000, £7 10*s.*; £7,001 to £8,000, £10; £8,001 to £9,000, £12 10*s.*

The Act contains the necessary machinery clauses for its administration.

Melbourne College of Divinity.—The preamble shows the object of the Melbourne College of Divinity Act (No. 2275) "whereas it is expedient to provide facilities for the conferring of degrees, diplomas, and certificates in divinity, and for that purpose to provide for the constitution and incorporation of a body (other than the University of Melbourne or any college or educational establishment affiliated to or connected with the University)."

The College is to consist of sixteen male members appointed as follows:

(*a*) Six as representatives of the Church of England;
(*b*) four as representatives of the Presbyterian Church;
(*c*) four as representatives of the Methodist Church;
(*d*) one as representative of the Baptist Union;
(*e*) one as representative of the Congregational Union.

The term of office for members is four years with a right to re-election (s. 8), and five or more members are to constitute a quorum (s. 15), and all questions are to be decided by a majority of the votes of the members present at any meeting—the Chairman, in case of an equality of votes, to have a casting vote (s. 16).

The College is not to be affiliated to the University (s. 20).

It may hold examinations and grant degrees, diplomas, and certificates in divinity (ss. 21-3).

The degree of Bachelor of Divinity shall not be conferred upon any person unless such person—

(*a*) has obtained a degree in the University of Melbourne, or in some other University recognised by the University of Melbourne; and
(*b*) has subsequently to obtaining such degree completed a two years' prescribed course of study, and passed at least two examinations (s. 24).

The degree of Doctor of Divinity shall not be conferred upon any person unless such person—

(*a*) is a Bachelor of Divinity of at least seven years' standing; and
(*b*) has obtained in the University of Melbourne, or some other University as aforesaid, the degree of Master or Doctor in some faculty (s. 25).

Power is given to admit *ad eundem gradum* any person who has obtained a degree in Divinity to the corresponding degree in the College (s. 26).

No religious test is to be imposed upon any person to entitle him to enrolment, or to any examination, or to receive any degree, diploma, or certificate, or to be an officer or examiner (s. 27).

The privileges of the Act extend to both sexes (s. 28).

Railway Lands.—The Railway Lands Acquisition Act (No. 2276) provides for the acquisition of lands in the vicinity of the proposed site of any railway station, for township purposes, and for the holding of office by members of Railway Trust so long as they hold positions as municipal councillors.

Seeds.—The Seeds Act (No. 2273) contains provisions prohibiting the adulteration of seeds and for the official examination of samples and issue of certificates in connection therewith.

Savings Banks.—The Savings Banks Act (No. 2280) extends the operations of the Savings Banks by granting more extensive powers in respect of the total amounts that may be advanced as loans, and in particular empowers the Commissioners of the Bank to make advances on residential or shop properties, as distinct from agricultural or grazing lands.

Stock Mortgages.—The Stock Mortgages Act (No. 2252) is a short amending measure. S. 2 is in protection of creditors, and enacts that in future a stock mortgage shall not be registered if it comprises chattels other than stock. Previous to this, though a debtor could not have given an ordinary bill of sale over chattels without first giving fourteen days' notice, during which any of his creditors could lodge a caveat, yet he was permitted to give a stock mortgage including chattels other than stock without the necessity of giving any such notice.

S. 4 further provides that where a vendor sells to the same purchaser on the same day any stock and also any vehicles usually drawn by horses or bullocks, or any agricultural implements, such stock and vehicles and implements may be included (notwithstanding s. 2) in a mortgage of stock made by the purchaser in favour of the vendor.

Damages.—The Wrongs Act, 1910 (No. 2250), in the first place adopts the British amending Act of 1864[1] in respect to actions under Lord Campbell's Act, that if there is no personal representative of the person whose death has been caused, or if no action is brought by the personal representative within six months, all or any of the persons for whose benefit the right of action is given by Lord Campbell's Act may sue in their own names (s. 2).

In the next place it adopts the British Act of 1908,[2] that in the assessment of damages in any such action there shall be taken into account any sum paid or payable on the death of the deceased under any contract of assurance (including contracts with any benefit society or trade union) (s. 3).

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[1] 27 & 28 Vict. c. 95.

[2] 8 Ed. VII. c. 7.

Lastly, and perhaps a more important section, is s. 4, dealing with actions of seduction. Of course, in theory the ground of legal action for seduction has been always loss of service or the possibility thereof consequent upon the seduction, and the capricious operation of this old law has often been the subject of censure. This section now renders it unnecessary to prove loss of service in any action of seduction. Its terms are as follows: "In any action of seduction brought by a parent or person *in loco parentis* it shall not be necessary for the plaintiff to allege or give evidence of loss of service to the plaintiff by the woman or girl seduced or that between them there was the relation of master and servant, but such loss of service and relation shall be conclusively presumed in favour of the plaintiff."

7. WESTERN AUSTRALIA.

[*Contributed by* F. L. STOW, ESQ., LL.D.]

The session—the third of the seventh Parliament of Western Australia—lasted from July 28, 1910, to February 16, 1911. Fifty-seven Acts were passed, of which two are private Acts and the rest are public statutes, numbered 1 to 11 of 1910 and 1 to 44 of 1911. The private Acts call for no remark, and of the public, nine are financial measures—supply, appropriation, loan and annual taxation; five deal merely with public reserves, the closing of roads and the like, three have to do with the lighting and improvement of towns, and seven are intended to facilitate the operations of various public or semi-public institutions.

There are an unusually large number of railway Acts—twelve in all, providing in the aggregate for the construction of 623 miles of railway. One of these lines (twenty-two miles in length) was authorised and has been already constructed on account of the recent gold discovery at Bullfinch, but the remainder are to provide for the agricultural development of the State.

The other Acts may now be dealt with separately.

Agricultural Bank.—No. 4 of 1910 (Agricultural Bank Amendment) provides for the increase of the capital of the Agricultural Bank (which makes advances to settlers) to £2,500,000.

Finance.—No. 5 of 1910 (General Loan and Inscribed Stock) consolidates the law relating to the raising of loans. It makes but few and slight alterations in the law. One of these gives the Treasurer a discretion to set aside a lower percentage than formerly by way of sinking fund, but it is expressly provided that the repeal of existing Acts is not to affect any existing right or the contribution to the sinking fund of any existing loan.

Pharmacy.—No. 7 of 1910 (Pharmacy Compilation) is a compilation, made under the Statutes Compilation Act, 1905, of the various Acts relating to pharmacy and the sale of poisons. This is merely a reprint of the principal Act and its amendments.

Parliamentary Representation.—No. 6 of 1911 (Redistribution of Seats) abolishes the existing electoral divisions for the Legislative Assembly and re-divides the State into new electorates. The Act proceeds on no new lines, but the respective populations of the various districts have greatly altered since the last Redistribution of Seats Bill was passed in 1904 and a readjustment was therefore necessary. The method of representation is not based strictly on population. That, it is felt, would give undue power to the towns. The quota, therefore, for an electorate varies with the character of the district; thus, for example, there is one quota for towns, another for mining districts, and another for agricultural districts, and electorates are defined and seats distributed by this Act roughly in accordance with these quotas. The constituencies are single-membered.

Holidays.—No. 13 of 1911 merely provides for the extension to the bread carters of Kalgoorlie of the holidays already provided for their brothers in Perth.

Fertilisers.—No. 21 of 1911 (Fertilisers Amendment) is intended to make better provisions for ensuring that fertilisers shall be genuine and of good quality. It provides for the taking of samples of fertilisers whilst in course of transit to a purchaser, for compelling the seller to give an invoice showing the composition of the fertiliser at the time of delivery as well as at the time of sale, and it makes better provision for the recovery of penalties.

Wild Animals.—No. 23 of 1911 (Game Amendment) is intended primarily to save from extinction the rapidly disappearing opossum. It punishes possession of any portion of the body of a protected bird or animal and authorises the Railways Commissioner to refuse to permit skins, etc., of protected game to be carried on the railways.

Fisheries.—No. 24 of 1911 (Fisheries Amendment) amends the law regarding the granting of exclusive licences for taking marine animal life and products of the sea and provides for the protection of certain fish.

Crown Leases.—No. 26 of 1911 (Transfer of Land Amendment) provides that a mortgage given over a Crown lease shall attach to and be registered on the title of any freehold estate to which the holder of the lease shall during the subsistence of the mortgage become entitled under the terms of the lease.

Criminal Law.—No. 28 of 1911 (Criminal Code Amendment). This Act amends various defects in the Criminal Code; but the only substantial alteration in the law is the section which provides for the punishment of sexual offenders. It is made obligatory on the Court to order such offenders to be whipped in certain cases.

Road Boards.—No. 29 of 1911 (Roads) consolidates the Acts constituting and defining the powers of the Boards which control the construction and maintenance of roads outside municipalities. From time to time the powers of these Road Boards have been extended to other matters besides roads, as *e.g.* the improvement of recreation grounds, the provision of bathing enclosures and houses, the subsidising of hospitals and the provision of water supplies and all necessary appliances for the prevention of fires. This Act preserves and extends these powers and also confers on the Boards additional powers of borrowing for the provision of works of public utility within their districts. It has also been thought necessary to provide building regulations for townships situated in road districts. Consequently the Act contains a set of regulations and empowers the Governor to apply them to portions of districts. The Boards enjoy large powers of making by-laws with reference to a great number of local matters, but the Act enables the Governor to make general by-laws which will supersede any by-law made by a Board. The Act also reserves a large measure of control over the exercise of other powers of the Boards to the Government in Perth.

The powers conferred by this Act are in addition to powers enjoyed by Road Boards under other Acts, as *e.g.* the Health Act.

The Boards are, under this Act, to be elected by the ratepayers. In the first place the owner of rateable land will be placed on the electoral roll; but if he does not occupy the land himself he will be liable to be displaced if the occupier makes a special application to supplant him.

Rates will, in general, be on the unimproved capital value of the land, with power to levy them on the annual value in town sites or specially defined areas.

The measure is temporary, expiring at the end of 1912; but on its expiry it will, doubtless, be succeeded by an Act conferring still further powers on these local bodies.

Constitution.—No. 31 of 1911 (Constitution Amendment) makes an alteration in the constitution similar to that made a year or two ago in the neighbouring State of South Australia. It reduces the annual value of the occupation qualification from £25 to £17. The value of the freehold qualification is at the same time reduced from £100 to £50. Thus the franchise of the Chamber of Review is brought a step nearer the adult franchise of the Assembly.

Liquor Licensing.—No. 32 of 1911 (Licensing) is a consolidating measure replacing seventeen Acts; but it also reforms the liquor legislation of the State, providing for the introduction of popular control by means of local option votes.

The licensing districts correspond with the electoral districts, subject to the powers of the Governor to amalgamate or subdivide districts.

A Licensing Court consists of three members nominated by the Governor.

The fees charged for licences remain practically unaltered, the annual fee for a publican's general licence varying, for houses within municipalities, from £50 to £100, and, for houses outside municipalities, from £40 to £50. Alterations have been made as regards some classes of licences, but they are not of such a kind as to call for comment here, except, perhaps, the change made in the Australian wine licence, which marks another step in the evolution of that licence under the influence of Australian Federation. Originally the law provided for a colonial wine licence costing £2, and authorising the sale of Western Australian wine only. If any one wished to sell the wine of any other part of the Commonwealth he had to have a publican's general licence. The High Court of Australia decided that this discrimination was an interference with the freedom of interstate commerce, and was consequently forbidden by the Constitution. The law was then altered so as to provide for a separate licence in respect of the wine of each State, the respective fees for such licences being equal. The present Act has gone a step further, and provides one licence under which the licensee is authorised to sell all kinds of Australian wine.

Unquestionably the local option provisions constitute the most striking feature of this measure. They apply only to publicans' general licences, and other licences which are considered to be of a similar quality. Thus the ordinary grocer's or gallon licence is excluded. The Australian wine licence is, however, included. Except as hereinafter indicated, no new licence, of a class to which these provisions apply, can be granted except pursuant to a vote for "increase."

The Bill as introduced bore a close resemblance to the laws of New South Wales and Victoria. It provided, like the Victorian Act, for compensation to those deprived of licences. This was, however, payable not by the Government, but out of a sort of mutual insurance fund made up of contributions by the licensed trade. During the passage of the measure through Parliament the compensation clauses disappeared, and a time limit was substituted, the submission to the vote of all questions except that of increase or no increase being postponed till 1921. Before 1921 local option votes will deal merely with the question of increase or no increase.

The resolutions which may be submitted to the vote are as follow:

(1) Before 1921: that the number of licences in the district be (or be not) increased (B).

(2) In and after 1921, except where resolution D (no licence) has been carried and is in force in the district—

A. That the number of licences existing in the district continue;
B. That the number of licences in the district be increased;
C. That the number of licences existing in the district be reduced; and
D. That no licences be granted or renewed in the district; and

(3) In or after 1921, when resolution D has been carried and is in force in the district—

E. That licences be restored in the district.

The voters are the same as vote at Assembly elections, that is, practically every man and woman of full age. The vote is taken once every three years separately in each district, and at every poll the following questions are also submitted to the voter:

1. Do you vote that all new publicans' general licences in the district shall be held by the State?

2. Are you in favour of State management throughout the district?

Majorities Required.—A (continuance), B (increase), and C (reduction), require a simple majority only; but where (after 1920) B is not carried the votes given for that resolution will be added to those given for A.

D (no licence) requires a three-fifths majority. If D is not carried the votes given for it will be added to those given for C.

E (restoration) requires a three-fifths majority.

Neither D nor E is to be deemed carried unless 30 per cent. of the electors in the district vote for it.

Effect of Resolutions.—If A is carried, the number of licences is not to exceed the number existing when the vote was taken.

If B is carried, the Licensing Court may grant new licences, but a local petition signed by the majority of electors in the vicinity must be presented to the Court before a licence may be granted for any premises.

If C is carried, the number of licences existing when the vote is taken must be reduced and may be reduced to three-quarters of that number.

If D is carried, no licence shall be granted, renewed, or transferred, and the resolution is to take effect at the end of the year in which the vote was taken, when all licences of every description to which the local option provisions apply shall cease to be in force within the district.

If E is carried, licences may be granted, renewed, or transferred, but so that the number of licences shall not exceed the number held when D was carried. If E is not carried, D remains in force.

The duty of determining the actual number of licences to be cancelled after a reduction vote and the particular licences to be sacrificed devolves on the Licensing Court of the district. Certain rules are prescribed fixing the minimum reduction and making houses that have been badly conducted liable (other things being equal) to suffer deprivation before those that have been well conducted.

These local option provisions are, however, subject to certain exceptions and qualifications.

New settlements and out-lying places receive special consideration, for it is provided that, except when resolution D has been carried and is in force in the district, the Licensing Court may grant a licence for any premises distant more than fifteen miles from any licensed premises.

Provision is also made for the establishment of State hotels.

When Resolution B or E is carried and the question that all new publicans' general licences be held by the State is answered affirmatively, then o new publicans' general licence can be granted to any one except a nominee f the Minister. Even then it is not obligatory on the State to establish any tate hotel nor is the Court bound to grant any application of the Minister, or such licences can only be obtained subject to the same restrictions as xist in respect of ordinary licences.

The power to establish State hotels is peculiar to Western Australia and vould seem to be a fitting power for the State to possess in view of the ndoubted success of the State hotel at present existing at Gwalia. In act, many look to State control as a means of abolishing a number of buses to which the licensing trade is subject. It is for this reason that the econd question relating to State control is to be submitted. Even though he answer to this question is "Yes," yet it amounts to no more than a ecommendation to Parliament. An affirmative answer will, no doubt, specially if reiterated, carry great weight with the Legislature and move t to devise means for assuming that control which the people desire it o assume.

The efficacy of a local option law would be very seriously impaired f no restrictions were placed on clubs. For years the sale or supply of iquors in any but clubs duly registered under the licensing law has been prohibited. Under the old law one registration was sufficient, but now registration must be renewed annually.

Many have thought that clubs should be included in the local option provisions and this has been done in New South Wales, Victoria, and New Zealand. In this State, however, it has been considered that the law as to the condition under which clubs shall be conducted, the election of members and the admission of strangers could be made so strict that none but genuine clubs (in which the supply of liquor is a mere incidental) could comply with it, and, though the conditions actually prescribed may seem somewhat severe, yet they are the price which clubs must pay for freedom from the local option provisions.

In this, as in most States, the practice has grown up of regarding the licensee as entitled to a renewal of his licence as a matter of right, unless he has been guilty of misconduct. So strong has this practice become that in some cases it has been found necessary to limit it by express enactment. Thus in 1891 the South Australian Parliament enacted that after fifteen years licences should not be renewed as a matter of course, but at the discretion of the Bench only. It was in view of this practice that the ten years' postponement of the main local option proposals was inserted in the Act now under review, and this Act marks the distinction between existing licences and those to be hereafter granted by expressly providing that the renewal of the latter shall be in the absolute discretion of the Court.

The Act, though it does not hesitate to deprive licensees of their licences by popular vote after the expiry of the period mentioned, yet is by no means careless of the rights of those interested in licenses and licensed premises. It provides a complete system of devolution in case of the death, bankruptcy, or insanity of a licensee, and preserves the licence for the benefit of the owner of the premises when a tenant licensee has suffered a forfeiture through his own misconduct.

Payment of Members.—No. 33 of 1911 (Parliamentary Allowances) increases the allowances of Members, the Speaker, the President of the Council, the Chairman of Committees, and Ministers as from January 1, 1911.

Public Health.—No. 34 of 1911 (Health) consolidates and amends the law on the subject of public health and the adulteration of food and drugs.

Formerly the administration was, subject to Ministerial control, vested in a Central Board and Local Boards of Health. But under this Act the administration is in the hands of a Commissioner of Public Health (who must be a medical practitioner) and in local authorities consisting of Municipal Councils, Road Boards, and where neither of these are available, Local Boards of Health.

The Minister may at any time exercise the functions, and supersede any act of the Commissioner or of any local authority.

The local authorities are bound to have efficient medical officers and inspectors, and the Commissioner may prescribe the duties of such officers, and may also cause any act which a local authority ought to perform to be done for it, and at its expense, in case it makes default in carrying out its duty.

Local authorities are given powers of rating land within their districts in order to raise the money necessary to carry out their duties. Such rates may be either on the annual value or the unimproved capital value of the land.

The health authorities are given extensive and detailed powers in regard to sewers and drains, scavenging, and purity of water supplies.

Public buildings, too, are subject to their control. Plans have to be approved by the Commissioner before any public building is commenced, and the complete building has also to be approved before it is opened.

The foundation of the food and drug provisions will be found in English legislation, but many additions and amendments have been made. One of the most important of these is the provision for the appointment of an Advisory Committee, whose duty it will be to fix standards for foods and drugs. This committee will consist of the Commissioner, the Government analyst, a bacteriologist, and two persons versed in trade requirements. Power is given to prohibit the sale of any article not in conformity with the appointed standards.

The Commissioner is empowered to examine any food, drug, or medical appliance that is being offered for sale, and may report to the Minister. The report may be published in the *Gazette* and in any newspaper, and its republication in the press will be privileged.

The Commissioner also has authority, with the advice of the Advisory Committee, to prohibit the sale of any patent medicine which the committee egard as deleterious or dangerous to health.

S. 188 contains provisions which will be of interest to the advertisers f patent medicines and patent appliances. The publication of any false tatement concerning any article as a medicine or appliance for the cure, lleviation, or prevention of disease is prohibited. This prohibition is extended o the sale of any newspaper published outside the State which contains any uch false statement. It is, however, provided that no person shall be enalised under the section unless he shall, before the commission of the act harged against him, have received written warning from the Commissioner f the falsity of the statement in question.

The measure contains elaborate provisions for checking the spread of nfectious diseases, but it has not been thought well to continue comulsory vaccination, for a conscience clause is embodied in the Act.

Provision is made authorising local authorities to establish hospitals for nfectious diseases.

The Act provides for the registration of midwives, and care is taken that hey shall be competent.

A feature of the Act is the wide power given to the Governor and the Commissioner and the local authorities of making by-laws and regulations. In almost every part of the Act we find this power inserted, and the success f the measure will, no doubt, to a great extent depend on the manner in which this important power is exercised.

Juries.—No. 35 of 1911 (Jury Amendment) provides for the acceptance f the verdict of two-thirds of the jurors in civil cases under certain circumstances.

University.—No. 37 of 1911 (University) recites that Western Australia s the only one of the Australian States which has no university, and it proceeds to remedy the defect by providing a university governed by a Senate nd Convocation.

The Act empowers the Government to grant or demise to the university Crown lands by way of endowment, and it provides for payment to the Senate out of consolidated revenue of an annual subsidy of £13,500.

Natives.—No. 42 of 1911 (Aborigines Amendment) amends various sections of the Aborigines Act, 1905, and makes provision for natives twice convicted of cattle-spearing being deported from their own districts and kept n other portions of the State.

Elections.—No. 44 of 1911 (Electoral Amendment) amends the Electoral Act, 1907, in various ways, so as to facilitate co-operation between the State and Commonwealth Electoral Departments, to make the giving of contingent votes compulsory, and to provide for the improvement of the electoral law in other respects.

8. PAPUA.

[*Contributed by the late* W. F. CRAIES, ESQ.]

Ordinances passed—17.

Courts of Justice.—No. 3 provides for the appointment, powers, and functions of a deputy chief judicial officer.[1] The appointment may be permanent or for a specified time or to meet the emergencies of a particular occasion.

Land.—Three Ordinances deal with land in the territory.

Nos. 7 and 16 amend the Land Ordinance of 1906.[2] No. 7 deals with the assignment of and other dealings with leases.

No. 16 deals with

(1) the conditions as to rent in agricultural leases and limiting the grant to 5,000 acres, and transfers of such leases to persons already holding leases covering 5,000 acres;
(2) pastoral leases;
(3) residence leases;
(4) special leases for wharves, storehouses, factories, etc.

Provisions are made for imposing fines for not fulfilling improvement conditions in leases other than for agricultural or pastoral purposes.

No. 13 ante-dates the commencement of the Survey Fees Ordinance of 1909.[3]

Mining.—Two Ordinances deal with mining.

No. 4 declares certain occupied Crown lands to be mining tenements and subject to mining regulations under the Mining Act of 1898, which is an adopted Queensland Act.

No. 6 empowers the Governor to grant reward claims (six claims of one man's ground) to a person who discovers payable gold by boring through the false bottom of any existing gold field.

Native Labour.—Two Ordinances deal with native labour.

No. 5 prescribes the garb to be worn by natives engaged in feeding machinery, and the inspection of boilers used by employers of native labour.

No. 10 makes provision for suspending contracts of service by native labourers during a period of existing or apprehended epidemic, and for the care and if need be treatment of the labourer during the period of suspension.

Liquor.—No. 8 makes the consent of the Lieutenant-Governor in Council necessary for the grant or transfer of a liquor licence to any person, firm, or company already holding a liquor licence under Part II. of the Liquor Ordinance of 1891.

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[1] This repeals Ordinance 11 of 1902. See Journal, N.S. vol. xi. p. 402.

[2] See Journal, N.S. vol. viii. p. 339.

[3] See Journal, vol. xi. p. 404.

OTHER ORDINANCES.

Nos. 1, 2, 11, 12, 14, 15, 17. Appropriation.

9. DOMINION OF NEW ZEALAND.

[*Contributed by* JAMES CHRISTIE, ESQ., LL.B., *Barrister-at-Law, Crown Law Office, Wellington.*]

Acts passed—Public and General, 85; Local and Personal, 37.

The following is a brief statement of the principal provisions of those of the Acts passed which are of more than merely local interest:

Phosphorus Matches.—No. 4 adopts the provisions of the White Phosphorus Matches Prohibition Act, 1908[1] (Imperial), and prohibits the importation into New Zealand of matches in the manufacture of which white phosphorus has been used, and also prohibits the use of such phosphorus in the manufacture of matches in New Zealand.

Exhibitions.—No. 5 makes general provision for the holding in New Zealand of exhibitions of works of art and industry. It provides, *inter alia*, for the following matters:

(1) The temporary setting apart, as exhibition sites, of Crown or other land;
(2) the appointment and incorporation of Exhibition Commissioners to superintend and control the exhibition;
(3) the remission of Customs and Excise duties in respect of goods required for any exhibition;
(4) the suspension or modification, with respect to any exhibition, of Acts regulating the employment of labour, or imposing restrictions on immigration;
(5) the control of the finances of any exhibition; and
(6) permitting local authorities to exhibit at such exhibitions and to defray the expenses connected therewith out of ordinary revenue.

Public Debt Extinction (No. 8).—The purpose of this Act is to establish a sinking fund to provide for the repayment within seventy-five years of that part of the public debt in respect of which no sinking fund already exists, and for the repayment of all future loans within seventy-five years from the date thereof.

It is estimated that an annual payment of £140,500 will require to be made to the sinking fund so established in respect of the present public debt, and that a further sum of £2,230 per annum will be required for the repayment of every £1,000,000 hereafter raised.

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[1] Ed. VII. c. 42, See Journal, N.S. vol. x. p. 298.

All amounts so set apart towards the repayment of the public debt are to be invested by the Superintendent of the New Zealand State-guaranteed Advances Office, by way of loans to settlers, workers, and local authorities under the provisions of the New Zealand State-guaranteed Advances Act, 1909.

The New Zealand State-guaranteed Advances Amendment.—No. 13 extends the privileges of "workers" and "settlers" in respect of advances granted by the Government for the purpose of promoting settlement.

Crimes Amendment (No. 15).—The purpose of this Act is to establish a scheme the primary aim of which is the reformation of the criminal and incipient criminal class of the community, and the consequent transformation into good and desirable citizens of men and women whose present condition constitutes a standing menace to the well-being of the State. With this object in view the Act provides that in addition to or in lieu of any term of punitive imprisonment, a person convicted of an indictable offence may be sentenced to a term of reformative detention not exceeding ten years; and a person convicted summarily may be sentenced to a term of three years for a like purpose. In the case of a sentence to reformative detention passed by a magistrate there is a right of appeal to the Supreme Court on the ground that the sentence is excessive or otherwise unjustifiable, and the Supreme Court may on appeal uphold, reduce, or cancel that sentence.

For the purpose of administering the Act a Prisons Board is constituted, the members of which are to be appointed by the Governor in Council, the president of the Board being a judge of the Supreme Court.

The Board has power from time to time to make recommendations to the Governor for the discharge or release on probation of persons undergoing sentences of reformative detention, and the Governor may authorise such discharge or release accordingly.

S. 26 of the Act provides for the employment of all persons undergoing imprisonment (whether reformative or merely punitive) in such manner as the Governor by regulation may prescribe, or as may be directed by the Minister of Justice. The Governor is further empowered to make regulations prescribing rates of wages to be earned in respect of the several classes of work engaged in; and the persons so employed are to be credited with such wages accordingly. The amount standing to the credit of any person may from time to time be applied towards the maintenance of his wife and children (if any), and on his discharge or release on probation the balance is to be paid over to him, either in instalments or in a lump sum, as directed by the Minister of Justice.

[1] No. 31 of 1909.

Oaths.—This Act, adopting the English Act, 1909,[1] relates solely to the manner of taking oaths, whether administered in judicial or other proceedings. In judicial proceedings, unless the person about to take the oath voluntarily objects thereto, the oath is hereafter to be administered as follows:

> The officer administering the oath shall repeat the appropriate words of adjuration, commencing with the words "You swear by Almighty God that," or words to the like effect, and concluding with the words of the oath as prescribed or allowed by law, and the person taking the oath shall thereupon, while holding in his hand a copy of the Bible, New Testament, or Old Testament, indicate his assent to the oath so administered by uttering the words "I do," or other words to the like effect.

An oath may also be legally and validly taken by a person repeating the words of the oath as prescribed or allowed by law, while holding in his hand a copy of the Bible, New Testament, or Old Testament, or may be administered and taken in any manner which would have been lawful if the present Act had not been passed.

The important feature of this Act is that it dispenses with the former practice of "kissing the book" as a necessary part of the act of taking an oath.

Indecent Publications (No. 19).—The purpose of this Act is to repress effectively the publication, sale, and distribution of indecent and offensive literature. The term "indecent document" as defined by s. 2 is very comprehensive, and includes any book, newspaper, picture, photograph, print, or writing, or other thing having imprinted, written, or otherwise exhibited thereon any indecent word, statement, picture, illustration, or representation. *Inter alia*, the following acts are declared to be offences, namely, the sale, delivery, hiring, printing or causing to be printed, posting or causing to be posted, or exhibiting of any indecent document, or the writing, drawing, affixing, impressing, or exhibiting in any public place, or in view of persons in a public place, of any indecent word, picture, drawing, or sign.

Every person who commits an offence under the Act is liable to a fine of £50; but where the offence is wilful a penalty of £100 or imprisonment for three months may be inflicted.

In the case of a newspaper being an indecent document within the meaning of the Act, it is provided that the printer, publisher, proprietor, manager, editor, and sub-editor, and also all persons consenting to the insertion of any indecent matter in that newspaper, shall each be guilty of an offence, and severally liable accordingly.

In determining whether or not any document or other matter is indecent within the meaning of the Act, s. 5 imposes upon the magistrates before whom any prosecution in respect thereof is being heard an obligation to take into consideration not merely the nature of the document or matter itself, but also the nature or circumstances of the act done by the defendant with respect thereto, the purpose with which the act was done, and the literary, scientific, or artistic merit or importance of the document or matter; and no document or matter is to be regarded as indecent unless, having regard to those and all other relevant considerations, the magistrate is of opinion that the act of the defendant was of an immoral or mischievous tendency.

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[1] 9 Ed. VII. c. 36. See Journal, N.S. vol. xi. p. 347.

Prosecutions are to be instituted only with the leave of the Attorney-General, and are to be heard before a magistrate only.

By-laws (No. 28).—The purpose of this Act is to avoid the upsetting of the by-laws of a local authority by reason only of technical or formal objections. Provision is made for the confirmation by the Minister of Internal Affairs of any such by-laws within three years from the date thereof. Such confirmation is to constitute conclusive evidence as to the validity of the by-laws confirmed, except so far as that validity depends upon the powers of the local authority making those by-laws, or except so far as they are repugnant to the laws of New Zealand.

Justices of the Peace Amendment.—No. 29 provides that where a person has been imprisoned for non-payment of a fine, and afterwards pays a portion of the fine imposed, the term of imprisonment for which he has been committed shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he was so committed as the sum so paid bears to the fine, together with the costs and charges for which the prisoner has become liable.

Commercial Trusts (No. 32).—The purpose of this Act is to prevent the establishment and growth of monopolies with respect to the following classes of goods, namely, agricultural implements, coal, meat, fish, flour, oatmeal, petroleum, sugar, and tobacco, and a maximum penalty of £500, recoverable at the suit of the Attorney-General, may be imposed in respect of offences against its provisions.

In the case of an offence committed by a commercial trust (as defined by s. 2) or by a corporate body, all persons being members of that trust or corporation are to be deemed guilty of that offence, and are severally liable in respect thereof accordingly. In addition to any other penalty, the Court may in any proceedings in respect of an offence under this Act grant an injunction against the continuance thereof.

The following acts are declared to be offences against the provisions of the Act:

(*a*) Giving any rebate, concession, or other allowance in consideration for exclusive dealing;

(*b*) Refusing to deal with any person on the ground that that person has not agreed to deal exclusively with any particular person;

(*c*) Conspiring to create a monopoly in respect of any goods in New Zealand;

(*d*) Selling or offering for sale any goods at an unreasonably high price, if that price has been fixed or determined by the operations of a commercial trust.

Contagious Diseases Act Repeal.—No. 33 repeals the Contagious Diseases Act, 1908 (Women), which itself repealed and substantially re-enacted the provisions of the Contagious Diseases Act, 1869.

S. 3 of the Act of 1908 (repeating the corresponding provisions of the original Act) authorised the Governor to proclaim districts within which the Act should operate. The power conferred by this section has never been exercised, and the Act (though on the Statute-book since 1869) has accordingly never been in operation in any part of New Zealand.

Post and Telegraph Amendment (No. 36).—The only provisions of general interest in this Act are those which confer upon the Governor authority to take and retain possession of any telegraph station in time of war or at any other time when war may reasonably be apprehended; and also to utilise at such times the services of all operators and other persons connected with that telegraph station. Provision is made for the compensation of persons suffering loss by reason of the exercise by the Governor of the powers conferred by this Act.

Destitute Persons.—No. 38 consolidates and amends the law relating to affiliation, the maintenance of destitute persons by their near relatives, the maintenance of children by their parents, and of wives by their husbands. Provision is made for the summary separation of husband and wife on the ground of desertion, cruelty, habitual drunkenness, and of crimes of violence. Desertion of a wife or child by leaving New Zealand is made an indictable offence. Provision is made for the recognition and enforcement in New Zealand of maintenance orders made in Australia or elsewhere out of New Zealand. Maintenance orders are made enforceable by way of attachment of wages, charging orders on land, and otherwise.

Secret Commissions (No. 40).—The primary object of this Act is to render illegal the practice of agents in secretly accepting payments and other valuable considerations from third persons in respect of the business of their principals. The Act—which is similar in effect to the Secret Commissions Acts of the Commonwealth of Australia [1] and the State of Victoria,[2] and to the Prevention of Corruption Act, 1906 [3] (Imperial)—creates the following offences:

(1) The giving of secret bribes or other considerations to agents by third persons;

(2) The receiving of secret bribes or other considerations by agents from third persons;

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[1] No. 10 of 1905. See *Legislation of the Empire*, vol. i. p. 430.

[2] No. 1974 of 1905. See *Legislation of the Empire*, vol. ii. p. 142.

[3] 6 Ed. VII. c. 34. See *Legislation of the Empire*, vol. i. p. 135.

(3) The concealment by an agent of his pecuniary interest in a contract made by him on behalf of his principal;
(4) The giving to an agent by a third person of a false or imperfect receipt, invoice, or other document with intent to deceive the principal;
(5) The giving by an agent to his principal of any such document as aforesaid; and
(6) The receiving of secret commissions for advising third persons to enter into contracts with the person paying such commissions.

No prosecution for an offence against the Act is to be instituted except with the consent of the Attorney-General.

National Provident Fund (No. 41).—This Act embodies a scheme for the establishment of a National Provident Fund, contributors to which are thereby enabled and encouraged to make provision for old age and sickness, and for the maintenance of their widows and orphans.

The solvency of the fund is guaranteed by the Government and an annual subsidy of one-fourth of the preceding year's contributions is payable to it out of the Consolidated Fund.

All persons may become contributors who are resident in New Zealand, who are between sixteen and forty-five years of age, and whose income does not exceed £200 a year.

The contributions to the Fund are weekly payments, the amount of which depends (1) on the age at which the contributor first joins the fund, and (2) on the amount of the pension for which he elects to contribute. Thus for a weekly pension of 10*s*. a week, the weekly payment varies from 9*d*. a week at the age of seventeen to 4*s*. 11*d*. a week at the age of forty-five. The right of a contributor to a pension matures at the age of sixty years, and the amount of the pension is, according to the rate of contribution, either 10*s*., 20*s*., 30*s*., or 40*s*. a week.

Provisions are made for the payment of contributions by way of lump sums in advance, and for the benefit of contributors who fall into arrears. A contributor may at any time elect to withdraw from the fund, and is then entitled to a refund of all his contributions, less any payments already received. In addition to the right to a pension at the age of sixty years, a contributor secures an allowance for the support of his children during any period of his incapacity arising from illness or from personal injuries, and a weekly allowance is made to his wife and children in the case of his death. The allowance is at the rate of 7*s*. 6*d*. per week in respect of each child under fourteen years of age and (in the case of the death of the contributor) an additional sum of 7*s*. 6*d*. per week is payable to his widow so long as any child of the deceased is under that age. An allowance (not exceeding £6 in any case) is made to help to defray medical and other expenses incurred in respect of the birth of each of the children of a married contributor.

Public Revenues.—No. 43 repeals the Public Revenues Act, 1908, and re-enacts its provisions with certain modifications. The most important feature of the new measure is the substitution of the system of post-audit of the public accounts for the previously existing system of pre-audit.

Licensing Amendment (No. 46).—The most important feature of this Act is the amendment made in the law relating to licensing polls. At the triennial poll to be held to determine the question as to the continuance of licences for the sale of intoxicating liquor in the various licensing districts, voters will, hereafter, be required to vote on two issues only—namely, either for the continuance of licences or for no licence. Prior to this amendment of the law a third issue was submitted to the voters, namely, the reduction of the number of existing licences. This issue has been eliminated.

Provision has also been made for taking a licensing poll to determine whether or not licences are to be issued in any part of New Zealand—that is, on the question of national prohibition as opposed to local prohibition. These provisions are entirely new.

Voters are required to vote either for or against national prohibition, and if three-fifths of the voters at any election are in favour of national prohibition, the proposal is carried, and national prohibition comes into force on the expiration of four years from the date of the election at which the proposal was carried.

On the coming into force of a determination by the electors that no licences are to exist in New Zealand, all existing licences will lapse, and it will thereupon become unlawful for any person (while that determination continues in force) to import into New Zealand, or to manufacture, sell, or have in his possession for the purposes of sale intoxicating liquor of any description. A proposal for the restoration of licences will be submitted to the electors at the first general election which is held after the expiration of three years from the coming into force of the determination in favour of national prohibition. The proposal for national restoration is to be carried if at least three-fifths of the voters are in favour thereof; and the determination comes into force at the expiration of three months.

Other amendments provide (1) for the gradual abolition of the practice of employing women and girls to sell liquor on licensed premises, and (2) for the restriction of the supply of liquor to persons of the native race.

Stone-quarries (No. 48).—The purpose of this Act is to secure the safety of persons employed in stone-quarries by providing that only men of sufficient skill and experience may hold the positions of manager and deputy manager therein respectively, and by enacting certain rules for the regulation of blasting and other hazardous duties incidental to the working of such quarries.

Inalienable Life Annuities.—No. 49 provides for the creation and issue of annuities which (to an amount not exceeding a total of £104 per annum) shall be inalienable either by the act of the annuitant or by operation of law in favour of his creditors.

Crown Suits Amendment (No. 54).—Prior to the passing of this Act, the liability of the Crown was limited by s. 35 of the Crown Suits Act, 1908, to causes of action arising out of:

(*a*) Breaches of contract; and
(*b*) wrongs independent of contract done or suffered in connection with a public work.

This section has been repealed, and the Crown is now liable in respect of the following causes of action:

(*a*) Breaches of contract;
(*b*) any cause of action in respect of which a petition of right would lie against his Majesty at common law; and
(*c*) wrongs independent of contract for which an action for damages would lie if the defendant were a subject of his Majesty.

To the liability of the Crown, as hereinbefore stated, there are certain exceptions, the purpose of which is to protect the Crown from liability in respect of the malicious or wilful wrongdoing of its servants, and also against speculative and exorbitant demands for damages. Subject to these exceptions, the Crown is now placed in the same position as any other employer in respect of the negligence of its servants.

Gaming Amendment.—No. 56 makes important amendments in the law relating to betting and wagering, with a view to the reformation and prevention of abuses arising out of the sport of horse-racing.

For this purpose the provisions of the principal Act which authorised the licensing of bookmakers are repealed, and a duty is imposed on racing clubs to take all reasonable and lawful means to prevent bookmakers from plying their calling on racecourses under the control of such clubs. Any club failing so to do is liable to have its licence cancelled. In addition to the repeal of the provisions as to bookmakers' licences, careful provision has been made to prevent bookmakers from betting in any street, licensed premises, racecourse, or other public place. For an offence against these provisions a penalty of from £20 to £100 may be imposed, and in the case of second or subsequent offences, imprisonment for three months may be inflicted in lieu of fine.

S. 5 limits to 250 the number of days on which the totalisator may be used in any year; and also provides that at no race meeting is the totalisator to be used for more than four days, nor is any race meeting to extend over more than eight days.

S. 8 provides that no investment on a totalisator is to be made otherwise than by way of money, bank-note, or cheque, and no investment is to be received from any person under twenty-one years of age.

Workers' Dwellings.—No. 62 repeals the Workers' Dwellings Act, 1908, and in lieu thereof makes better provision for the erection and disposal of workers' dwellings. The Act provides for the setting aside of land as sites for workers' dwellings, and for the erection, improvement, and enlargement f such dwellings thereon. Such dwellings are not to exceed in capital alue an amount of £600, and may be disposed of by way of weekly enancy, or renewable lease for a term of twenty-one years, or by way of ale, the purchase money being paid by equal instalments distributed over a eriod of twenty-five and a half years.

The Act is administered by a Superintendent of Workers' Dwellings acting nder the authority of the Minister of Labour, and for each land district here is established a Board having control of the dwellings within that istrict.

The disposition by a worker of his interest in any dwelling acquired under his Act is invalid unless approved by the Board.

Public Works.—No. 66 authorises the construction and maintenance of ater-races and other water supply works by the Minister of Public Works, nd confers upon the Minister with respect to those works the powers of a Water Supply Board under the Water Supply Act, 1908. The water supply orks so constructed are to be utilised for the purposes of irrigation.

Education Amendment (No. 70).—By this Act better provision is made for the education of those children who, by reason of physical or mental defect, are incapable of being satisfactorily taught in the ordinary public schools, or with children who are not so handicapped.

Provision is also made for the issue of regulations to compel the attendance at continuation or technical classes of young persons beyond ordinary school age who are not otherwise receiving instruction at technical or other classes.

Public Holidays.—No. 71 provides for the observance of certain specified public holidays on the Monday following the day on which the date of that holiday actually falls (not being a Monday), and also reduces the number of bank holidays.

Tramways Amendment (No. 74).—S. 2 of this Act provides that, after the first day of January, 1912, no person is to be employed as a driver on an electric tram who is not the holder of an electric tram driver's certificate. Such certificates are to be granted only after examination, except in the case of persons who at the passing of the Act have for one year been employed as motormen, or have been the holders of motormen's licences granted by a local authority.

S. 3 gives the Minister of Public Works power to appoint officers to inspect and report upon all tramways and appliances, and the Minister may order all necessary alterations and repairs to be made.

S. 5 authorises the Governor in Council to make regulations for the inspection, maintenance, control, and management of tramways.

Fruit Farms Settlement.—No. 79 provides for the setting aside of lands not exceeding an aggregate area of 10,000 acres, to be disposed of by leasing or sale under Part III. of the Land Act, 1908, in allotments not exceeding 75 acres for fruit-growing purposes.

Municipal Corporations Amendment (No. 81).—S. 3 of this Act extends the privilege of voting at elections of members of borough councils to all British subjects over twenty-one years of age who for three months immediately preceding an election have been resident within the borough, or within the ward of a divided borough.

SS. 10 and 11 relate respectively to, and make more stringent, the provisions of the principal Act as to the disqualification for office of borough councillors, and as to the disqualification for voting purposes of members of any such council, or of any committee thereof, on matters in which that member is personally interested. The present amendment disqualifies any person who is either the director or the general manager of any company of which membership would itself be a sufficient disqualification if that company had less than twenty members.

Law of Libel Amendment.—No. 83 makes important amendments in the law relating to libel and slander. Prior to this Act there was no privilege for any reports except those of proceedings in Parliament and in the law courts. It is now provided that, in the absence of malice, the publication of the report of the proceedings of (1) any official inquiry, (2) any local authority or other body constituted under statute for the discharge of public functions, and (3) any Department or officer of the Executive Government, if that report is authorised by a Minister of the Crown, shall be privileged.

SS. 4, 5, and 6 deal with the abuse of suing a large number of newspapers in different actions for the publication of the same defamatory statement. These sections adopt and extend the provisions of s. 5 of the Law of Libel Amendment Act, 1888 (Imperial).[1]

S. 10 enables a defendant in a prosecution for libel to defend himself in the preliminary proceedings before a magistrate. Formerly, even although a defendant may have had a good defence, he had to be committed for trial on proof of publication.

S. 11 provides that cases of criminal libel may be dealt with summarily before a magistrate. Where the defence of publication for the public benefit is raised that defence must be established before evidence can be given as to the truth of the statements published.

Shipping and Seamen Amendment (No. 85).—This Act provides principally as follows:

(1) That seamen employed on ships trading between New Zealand and Australia, or between New Zealand and the Cook Islands, are to be paid at a rate not less than the rate of wages received by seamen in New Zealand.

(2) That where ships trading as aforesaid carry Asiatic crews there shall be imposed an additional stamp duty of 25 per cent. of the passage-money or freight received in respect of such ships.

This Act has been reserved for the signification of His Majesty's pleasure thereon, and received consideration at the Imperial Conference, 1911.

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[1] 51 & 52 Vict. c. 68.

10. FIJI.

[*Contributed by the late* W. F. CRAIES, ESQ.]

Ordinances passed—26.

General Loans and Inscribed Stock.—No. 3 declares the terms and conditions applicable to loans authorised to be raised by the Government of Fiji, and provides for the creation of Fiji inscribed stock. The loans are to be raised by debentures or stock inscribed under the Imperial Colonial Stock Act, 1877. The Ordinance limits the interest on debentures to 5 per cent., and on inscribed stock to 4 per cent., and provides for the date and mode of redeeming loans raised by either means.

No. 24 amends some slips in the above Ordinance.

No. 5 makes provisions to facilitate the investment of trust and other funds in the United Kingdom in Fiji Government securities. It is framed so as to satisfy the conditions of the Imperial Colonial Stock Act, 1900,[1] and the Treasury Order made under that Act on December 6, 1900.

Supreme Court Funds.—No. 7 provides for the custody and dealing with funds lodged in the Supreme Court. They are to be carried to the credit of the Receiver-General of the Colony, and the general revenue is made liable for the funds, which are held in Court to attend the orders of the Supreme Court in regard thereto, subject to Rules of Court.

Government Savings Banks.—No. 11, as amended by No. 25, empowers the Receiver-General to make arrangements with Government Savings Banks in the United Kingdom or a British possession, or foreign countries, for transfer of sums standing to the credit of depositors either into or out of the Fiji Savings Bank.

Cadet Corps.—No. 6 empowers the Governor to make regulations for forming, equipping, training, and discipline of cadet corps in connection with particular schools in the Colony, or defence corps consisting of youths not connected with any particular school. A scheme of regulation is annexed to the Ordinance, which does not state whether it is limited to Europeans or extends to "natives."

Criminal Procedure.—No. 10 amends the Criminal Procedure Ordinance, 1857, s. 37, as to capital sentences.

The new Ordinance prescribes (1) the form of sentence; (2) that as soon as conveniently possible after the sentence is passed the Chief Justice shall send the Governor a copy of his notes of evidence and a written report with such observations or recommendations as he thinks fit; (3) this report is to be considered by the Governor in Council and the terms of any decision communicated to the C.J. and the tenor and substance entered on the record. (4) The Governor is to issue the death warrant, or order of commutation or pardon, as the case may be, in forms prescribed, and his warrant and order is sufficient authority for carrying out the directions therein contained.

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[1] 63 & 64 Vict. c. 62. See *Legislation of the Empire*, vol. i. p. 56.

Legitimation.—No. 14[1] declares that any child born before the marriage of his or her parents, whether before or after the passing of the Ordinance (June 16, 1910), whose parents have inter-married or shall hereafter inter-marry shall be deemed to have been legitimated by such marriage from birth and shall be entitled to all the rights of a child born in wedlock. This does not apply if at the time of the child's birth a legal impediment existed to the marriage of the parents. Provision is made for the issue of a legitimate child who has died before the marriage of his or her parents.

Provision is made for correcting registers of births on the application of the father after his marriage, and a saving as to certain rights or interests created by dispositions made before June 16, 1910, or by devolution of law on the death of any person dying before that date.

Partnership.—No. 22 is an adaptation of the Imperial Partnership Act, 1890. It supersedes much of a prior Ordinance of 1878.

Customs.—No. 9 provides for the assessment of duty on goods subject to *ad valorem* duty which are reimported after being exported for repair.

No. 15 amends the Ordinances of 1907 and 1908 as to certain duties, and adds to the list of articles which may be exempted from duty agricultural implements and machines for the purposes of any manufacture or industry in the Colony.

Electoral Regulations.—No. 23 supersedes certain electoral regulations made by proclamation in 1904 and the Electoral Regulations Ordinance, 1907, and provides a new series of regulations for the registration of voters and the conduct of certain elections to the Legislative Council.

Municipal Institutions.—No. 26 amends the Municipal Institutions Ordinance of 1909[2] in numerous details. It contains a clause empowering the Governor in Council to dissolve a municipal council which is incompetent to perform or persistently makes default in the performance of its duties and to vest the powers and duties of the said council in named persons until a new council is elected.

Marine Board.—No. 12 amends the Marine Board Ordinance, 1899, in minor details, and brings in certain vessels, *e.g.* oil launches, not within the principal Ordinance.

Coasting.—No. 19 amends the Coasting Ordinance, No. 3 of 1882, by allowing the issue of coasting licences at places which are not ports of entry to certain classes of vessels.

Male and Servant.—No. 13 allows Indian and Polynesian immigrants who have completed the term of their original indenture of service to enter (on certain conditions) into agreements with employers under the Master and Servant Ordinance, 1890.

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[1] An Ordinance on the same subject passed in 1909 was not sanctioned by the King in Council.

[2] See Journal, N.S. vol. xi. p. 410.

Shipping Fruit.—No. 2 empowers the Inspector of Fruit or one of his European assistants to give directions to persons engaged in the transport or shipment of fruit as to dealing with or handling it so as to prevent its being injured. Disobedience to the directions is visited by penalties.[1]

White Phosphorus Matches.—No. 8 carries out the International Convention to secure the abolition of the use of white phosphorus in the manufacture of matches.

Poisons.—No 17 regulates the sale and use of poisons, on the same lines as the Imperial Poisons and Pharmacy Acts.

OTHER ORDINANCES.

No. 1. Appropriation Supplementary.
No. 4. Loan of £100,000 for public works, etc.
No. 16. Appropriation.
No. 18. Rotuma Ordinance Amendment.
No. 20. Census.

11. WESTERN PACIFIC.

[*Contributed by the late* W. F. CRAIES, ESQ.]

King's Regulations Nos. 1 and 2 relate to the Gilbert and Ellice Islands Protectorate.

No. 1 amends the Consolidated Regulations of 1908 as to the capitation law on all male residents who are not natives. It exempts ministers of religion, persons under sixteen and over sixty, and the holders of station licences and ships' licences.

No. 2 alters the duties on kerosene and tobacco, and allows the High Commissioner to vary the duties schedule by proclamation.

No. 4 requires payment in coin of the United Kingdom of all taxes, duties, fees, fines, and wages payable in the British Solomon Islands Protectorate.

No. 5 amends the rules governing the supply of arms in the British Solomon Islands Protectorate. The aim of the rules is to forbid the supply of arms or ammunition to any native, except shot-guns, but by employer to servant for a day to shoot birds, etc.

No. 3 not received.

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[1] The Ordinance repeals No. 12 of 1909. See Journal, N.S. vol. xi. p. 409.

V. SOUTH AFRICA.

1. UNION OF SOUTH AFRICA.

Acts passed—11.[1]

[*Contributed by* W. R. BISSCHOP, ESQ., LL.D.]

Crown Liabilities.—No. 1 repeals Cape of Good Hope Act No. 37 of 1888, Natal Act No. 14 of 1894, Transvaal Ordinance No. 51 of 1903,[2] and Orange Free State Ordinance No. 44 of 1903, and re-enacts the imposition upon the Crown of liabilities in respect of acts of its servants.

Census.—No. 2 repeals Cape of Good Hope Act No. 4 of 1903,[3] Natal Law No. 34 of 1880 and Act No. 8 of 1900,[4] and Transvaal Ordinance No. 9 of 1904,[5] and enacts that in the year 1911 a census shall be taken in the Union. Thereafter a census shall be taken in any such year as the Governor-General may determine.

Regulations for taking the census shall be made by the Governor-General. The powers are set out of the census officers, who shall act under the supervision of a Director of Census and as many assistant-directors as may be appointed by the Governor-General. They are similar to those contained in the repealed Acts. Penalties are imposed for census officers who fail to perform their duty, or who put offensive and improper questions, or ask payment or reward from any other but authorised officers, and for the giving or divulging or any information obtained by them. On the other hand, persons who fail to answer questions to the best of their knowledge and belief, or cause false or incorrect answers to be made, or refuse census officers entry of access to any land or premises shall be punished as required by the Act. Special provisions are made for not answering questions regarding religious persuasion or denomination, or as to the number of live stock or articles of commerce possessed.

Public Holidays.—No. 3 repeals the Cape of Good Hope Acts No. 3 of 1856, No. 34 of 1889, No. 19 of 1893, No. 5 of 1897, and No. 15 of 1902,[6] Natal Act No. 18 of 1901,[7] Transvaal Ordinance No. 37 of 1903,[8] Orange Free State Ordinance No. 28 of 1902,[9] Ordinance No. 31 of 1902,[9] and Ordinance No. 37 of 1903,[10] and establishes public holidays within the Union of South Africa.

To those mentioned in the Repeal Acts is now added: Union Day

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[1] The remainder of the legislation of the first session of the Union Parliament was passed within the year 1911.

[2] See Journal, N.S. vol. vi. p. 417.

[3] See *Legislation of the Empire*, vol. ii. p. 320.

[4] See *Legislation of the Empire*, vol. ii. p. 355.

[5] See Journal, N.S. vol. vii. p. 177.

[6] See *Legislation of the Empire*, vol. ii. p. 316.

[7] See *Legislation of the Empire*, vol. ii. p. 357.

[8] See Journal, N.S. vol. vi. p. 416.

[9] See Journal, N.S. vol. v. p. 386.

[10] See Journal, N.S. vol. vi. p. 401.

May 31), while the first Monday in August is replaced by the first Monday n October.

Naturalisation.—No. 4 repeals Cape of Good Hope Act No. 2 of 1883 nd Act No. 35 of 1889, the Natal Act No. 18 of 1905,[1] Transvaal rdinances No. 46 of 1902[2] and No. 10 of 1904,[3] Orange Free State rdinances No. 1 of 1903[4] and No. 7 of 1905,[5] and consolidates and mends the laws in force in the Union relating to the naturalisation of aliens.

The qualification for naturalisation shall be (1) the age of twenty-one ears or more; (2) residence in the Union (or any Colony or territory which t the date of the application forms part of it) for two out of five years mmediately preceding the date of the application; (3) the publication f a notice of intention to apply for a certificate of naturalisation in the *fficial Gazette*; and (4) the taking of an oath of allegiance.

The application may be granted or refused by the Minister of the Interior ith or without assigning any reason. The cost of the certificate of aturalisation is *2s. 6d.*

Naturalisation in the United Kingdom is considered to amount to aturalisation in the Union.

The wife, or minor children, follow the nationality of their husband r father. Twice every year, in the months of January and July, a return is ublished of all persons to whom certificates of naturalisation have been granted during the preceding half-year, while a public register is kept of all certificates granted under this Act.

Provisions are made for the acceptance of the certificates so granted as evidence of such naturalisation in Courts of Justice.

Interpretation.—No. 5, whilst abolishing the Cape of Good Hope Act No. 5 of 1883, the Natal Ordinance No. 2 of 1854, Law No. 3 of 1887, Law No. 14 of 1893 (s. 11), the Transvaal Interpretation of Laws Proclamation No. 15 of 1902,[6] Orange Free State Ordinance No. 3 of 1902,[7] consolidates the laws of the several provinces of the Union into one law regarding the interpretation and shortening of the language of any statute already, or thereafter, in force within the Union or any portion thereof. This Act may be cited as the Interpretation Act, 1910.

Mining.—No. 6 abolishes several Ordinances and a number of sections of Ordinances and Acts set out in the first schedule of this Act, and consolidates and amends the laws until then in force in the different parts of the Union relating to taxation on the profits of mining. The universal tax introduced by this Act shall be an annual tax

(*a*) of 10 per cent. on the profits of mining for diamonds;
(*b*) of 10 per cent. on the profits of mining for gold;

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[1] See Journal, N.S. vol. vii. p. 484.
[2] See Journal, N.S. vol. v. p. 398.
[3] See *Legislation of the Empire*, vol. ii. p. 459.
[4] See Journal, N.S. vol. vi. p. 400.
[5] See Journal, N.S. vol. vii. p. 487.
[6] See Journal, N.S. vol. v. p. 392.
[7] See Journal, N.S. vol. v. p. 382.

(*c*) of a rate of tax varying on a scale from $2\frac{1}{2}$ per cent. upwar on the profits of mining for other minerals.

On the shares of profits to which the Crown is entitled no tax sha be payable.

Provisions are made for the exemption from the tax and deductio to be made from owners' royalties; for the proper working of thes regulations, and for the interpretation of the various terms used in the Act.

Finance.—No. 8 applies a sum of money, not exceeding the sum £13,807,361, for the service of the year from May 31, 1910, to March 31, 191

No. 8 applies a sum of money not exceeding £11,283,514 for the servic of the railways and harbours for the year May 31, 1910, to March 31, 191 and the appropriation of a sum of money from the railway and harbour fun to the consolidated revenue fund.

Groote Schuur.—No. 9 provides for the surrender of the Groote Schu estates to the Government of the Union of South Africa, in accordance wit the will of the late Cecil John Rhodes, and for the release of the truste thereunder from all responsibility in connection with the said estates. Th first schedule sets out the plots of land belonging to this estate, while in th second schedule the conditions are provided under which the transfer is mad

Letters Patent.—No. 10 amends the laws in force in the provinces Natal and Orange Free State relating to applications for and hearing objections to the grant of letters patent by providing that the Ministe of Justice may from time to time depute his several powers and jurisdictio for the granting or refusal of letters patent to another person, provided tha the person so deputed shall be an advocate or barrister of at least ten year standing.

Cattle.—No. 11 provides for the cleansing of tick-infested cattle in suc divisions of the province of the Cape of Good Hope as shall be proclaime by the Governor-General. It is forbidden that infected cattle be on any mai road or any divisional or municipal road or on any public outspan commonage. If so found, they may be impounded by any field-corne justice of the peace, sheep inspector, or police officer, and any such office may order such cattle to be cleansed at the cost of the owner. A poun master may also clean the cattle before releasing them from his pound at th cost of the owner.

By proclamation of the Governor-General rules and regulations shall b published in the *Gazette* for the description of "cleansing" for the purpose of this Act, for the provision of penalties for the contravention of suc regulations, and for the proper carrying out of the provisions of this Act.

This Act may be cited as the Cape Province Cattle Cleansing Ac 1910, and shall be read and construed as having concurrent force an effect with the Cape of Good Hope Cattle Cleansing Act, No. 31 of 1908 as amended by Act No. 43 of 1909.[2]

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[1] See Journal, N.S. vol. ix. p. 454.

[2] See Journal, N.S. vol. xi. p. 413.

2. CAPE OF GOOD HOPE.

Acts passed—1.

Civil Service.—The Special Retrenchment Discontinuance Act merely epeals the Special Retrenchment Act, 1908,[1] which made certain deductions rom the salaries of civil servants.

3. NATAL.

[*Contributed by* J. W. F. Bird, Esq., I.S.O., *Attorney-General of the Province of Natal.*]

Acts passed—31.

Public Servants' Superannuation.—Act No. 1 was passed with a view to affording relief to those persons who, though hitherto in the employ of the Government, are not on the permanent establishment, and consequently are not otherwise entitled to pension rights. This Act applies also to women under special regulations, but not to persons holding only temporary employment. It provides for the transfer to this fund of persons already members of other funds, such as the Railway Superannuation Fund or the Public Employees' Superannuation Fund. It lays down the conditions of admission to the fund, makes provision for contributions, payment of annuities and other benefits, the reckoning of service for pension purposes, and for the proper administration and management of the fund.

Pensions.—Act No. 2 provides for the adjustment of retiring allowances of certain officers of the public service, and was passed with a view to making provision for such of the Government servants whose services might be dispensed with or whose offices may be abolished under the Union Government. It also provides for the granting of pensions or retiring allowances to such persons as may have been transferred from the Imperial service or the service of a British colony to the Natal service.

Education.—Act No. 5 provides for the establishment of school committees to be appointed at a public meeting of residents in a town or village, whose function it is to offer advice to Government on matters of education, and to visit and inspect Government or Government-aided schools. The committee to be elected every two years.

Act No. 6 provides for the compulsory attendance at school of European children over the age of seven, unless the child is, in the opinion of the Education Department, receiving sufficient instruction in some other way, or unless the parents through poverty cannot pay the charges and there is no free school within three miles of their residence. The Act provides for the appointment of attendance officers to see that the provisions of the Act ar carried out, and provides a penalty for the first offence of £2.

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[1] No. 7 of 1908.

Finance.—Act No. 8 provides for the maintenance of a reserve of publ stores and for the transfer of the capital value thereof from revenue accour to loan account, for the appropriation of unexpended balances under certai Loan Acts to other services, and for a loan of £300,000 to be applied t certain public works.

Church of England Properties.—Act No. 9 was passed for the purpos of transferring certain Church properties hitherto held by the late Dr. Colens Bishop of Natal, as Trustee for the Church of England, to trustees for th purposes of the Anglican Communion in Natal. It provides amongst othe things for the control of funds, makes special provisions in respect of certai churches and their control or administration, and for the payment of pension of £150 each to the daughters of the late Dr. Colenso.

Criminal Law Amendment.—Act No. 10 amends the Criminal Law in th following respects :—

(i) Standing authority is given to prosecutors in magistrates' courts. Thi does away with the system of a special deputation in practically every instance

(ii) The endorsement of warrants by magistrates to enable warrants t be executed in their divisions is repealed.

(iii) It affords greater facilities for the recovery of stolen property an for the detection of criminal offences, and gives increased authority to polic officers.

(iv) It declares certain acts to be criminal, such as all kinds of *incendium* housebreaking with intent to commit some uncertain crime, etc.

(v) Provides for conviction in certain cases of a lesser crime than tha stated in the indictment.

(vi) Provides for the extension of the sentence of an escaped convict s as to cover the time during which he has been at large.

(vii) For compensation to persons injured by acts of theft and the like which will be recoverable from the accused up to £25. In this case th complainant cannot again recover from the accused under the ordinary law.

(viii) Also for compensation to be paid out of accused's moneys to *bona fide* purchaser of stolen property.

(ix) Provides for certain matters of procedure, *e.g.* committal in case where guilt is admitted, arraignment, receivable evidence, spouses to b competent witnesses, etc.

(x) Magistrates are empowered to try and punish, but only to the exten of their jurisdiction, all crimes, even though the punishment which ma be awarded is greater than their jurisdiction, unless such crime is speciall excepted from trial in their court.

Supreme Court.—Act No. 12 provides for the increase of puisne judge of the Supreme Court to four, and for increasing of the salaries of the judge of the Supreme Court.

Natal Police.—Act No. 13 provides for payment by boroughs and townships of the cost of police service supplied from the Natal Police Force, and of a contribution to the Police Superannuation Fund in proportion to the number of officers and men engaged in such service.

The Act further makes provision for the payment of special pensions to the families of deceased members of the force under certain circumstances, and for payment of gratuities in the case of members being discharged on account of retrenchment, and of a grant to dismissed members in certain cases.

Payment of Rates by Government.—Act No. 15 provides for the payment of municipal and township rates in respect of Government premises.

Under the various Laws or Acts appointing boroughs or townships Government had always been specially exempted from payment of municipal rates or taxes, but the present Act takes away this privilege with a few exceptions, amongst others the Government residences at Pietermaritzburg and Durban, Houses of Parliament, Customs premises, and educational institutions.

East Coast Fever Loans.—Act No. 20, "To authorise loans by Government for the construction of dipping tanks, and the erection of fences, and to extend the provisions of the East Coast Fever Acts," was passed with a view to further combating the ravages of East Coast fever by assisting farmers in the construction of dipping tanks and the fencing of their lands. Loans made under this Act are not made a charge on the land as in Act No. 6, 1907, but the liability for payment passes to successive owners.

The Act provides a system of local option in regard to the enforcement of dipping or cleansing of cattle, and also for the yearly appointment of an advisory commission to assist the Minister in matters relative to the administration of East Coast Fever Acts, and the suppression of the disease.

Railways.—Act No. 21 provides for the construction and maintenance of the following railway lines: Gingindhlovu—Eshowe; Empangeni—Vryheid—Hlobane; Vryheid—Paulpietersburg; Greytown—Krantzkop; Hongerspoort—Bergville; Donnybrook—Underberg; Murchison Flats—Ingeli Poort; Elands Kop—Loteni.

Act No. 22 amends the railway laws with a view of bringing them into conformity with the Central South African railway laws.

Crown Lands.—Act No. 23, "To enable purchasers of Crown lands to suspend payment of the instalments of purchase price upon suitable terms," was passed to give time to those holders of Crown lands who had been heavy osers through cattle disease, or who otherwise might be in temporary financial difficulties.

Weenen Township.—Act No. 24 provides for the constitution of the various settlements at Weenen into a township under the Townships Law, No. 11, 1881.

East Coast Fever.—Act No. 28 authorises the Natal Native Trust to apply a sum of £10,000 from unexpended balances of the loan authorised by Act No. 27, 1902, to the prevention or suppression of East Coast fever.

Native Trusts.—Act No. 29 amends the constitution of the Natal Native Trust and the Zululand Native Trust by substituting the Governor-General of South Africa and the members of the Executive Council of the Union for the Governor of Natal and the Executive Council thereof.

Native High Court.—Act No. 30, to amend the Courts Act, No. 49, 1898,[1] confers higher criminal jurisdiction upon the Native High Court, and transfers to it the trial of all crimes committed by natives, including capital crimes.

Teachers' Superannuation.—Act No. 31 provides for the payment of pensions to European teachers who have served for not less than twenty years in a Government-aided or other school and retire through ill-health, or at the age of sixty.

ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Acts passed—16.

Agriculture.—No. 1 provides for the formation and management of co-operative agricultural societies.

Any number of qualified persons, not being less than seven, may form an agricultural society under this Act, and all such societies shall be registered. Qualified are all persons carrying on farming operations in the Colony. The Act sets out the different objects for which co-operative societies may be formed: to improve methods of production as well as of distribution. It further provides, in detail, the formalities to be gone through in order to have a society properly registered. The liability of members shall be joint and several, but it is not necessary for any society to have a fixed capital, the funds of a society being divided into capital and reserve funds.

The second chapter of the Act provides rules for the management of a society, while the third contains the formalities and rules regarding a society's dissolution. In the fourth chapter several penalties are set out to which different persons connected with the society may become liable. The schedule contains model regulations for these societies.

Pensions.—No. 2 regulates the retiring pensions of members of the Orange River Colony's police. The commissioned officers shall receive a pension under the provisions of the Pensions Ordinance, No. 23 of 1904. Policemen may retire with a pension at the age of fifty, provided the Governor considers it not necessary to retain them in the force, and in that case they may be retained until the age of sixty, but no longer. Various grounds are et out for obtaining pensions, and provisions are made for the pensions ayable to the widows of policemen killed in the execution of their uties.

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[1] See *Legislation of the Empire*, vol. ii. p. 351.

No. 14 provides for the pensions of the officers of Parliament of the Orange iver Colony, in view of their ceasing to exercise their functions after the stablishment of the Union Parliament.

Education.—No. 4 extends the powers of the trustees appointed under e Robertson Trust, whereby a number of bursaries were established at ertain educational establishments.

No. 5 repeals Part X. (ss. 48-51) of the Public Education Ordinance, No. 29 f 1905,[1] and makes better provision for the administration of the Grey College t Bloemfontein.

This college shall henceforward be established as the Grey University ollege, the objects of which will be to provide courses of instruction and aining in the arts and sciences, and such branches of applied science as may e approved by the Government.

The council of the college shall consist of ten members, to be appointed y the Governor for a period of five years. Provisions are made for their etirement, for the vacation of their offices, the filling of vacancies, the ppointment of a chairman and vice-chairman, transfer of property to, and nvestment of property in, the council, while under s. 8 the powers and nctions of the council are carefully set out.

The Governor is authorised to make further regulations.

No. 8 amends the provisions of the School Act, No. 35 of 1908,[2] rincipally for administrative purposes.

No. 13 repeals chap. vii. of the School Act, No. 35 of 1908,[3] and so much f chap. vi. thereof as may be inconsistent with the provisions of the present ct, and provides afresh for the classification, inspection, and staffing of chools, and the appointment, grading, and service of school teachers.

Classification.—There shall be three different types of schools, viz.:

(a) *Kindergartens or Froebel schools.*—These shall consist of two sections, ne for children between the ages of three and five, another for children etween the ages of five and seven, the classes not to exceed the number of ixty children. While the attendance shall not be compulsory, all instruction hall be given in strict adherence to the Syllabus of the Kindergarten ourse. Teachers, in order to be appointed, must possess the necessary ertificate of competency. Corporal punishment is strictly forbidden.

(b) *Primary schools.*—These are divided into four classes, in accordance ith the number of children visiting the school, viz.: the first class consisting f schools of 300 pupils and more, the second class of schools from 120 to 00 pupils, the third class of schools having from 40 to 120 pupils, and the urth where the number of pupils does not exceed 40.

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[1] See *Legislation of the Empire*, vol. ii. p. 402.

[2] See Journal, N.S. vol. x. p. 366.

[3] See Journal, N.S. vol. x. p. 366.

The chief aim of the primary school shall be to provide for the mora and intellectual education of all children above the age of six, and th curriculum must be so designed as to meet the needs of all classes of th community, without, as a rule, going beyond Standard VII. The subject in which instruction must be provided by the curriculum are: Bible histor and morals, writing, English, Dutch, arithmetic, object lessons, natur knowledge, history, geography, drawing, singing, needlework or domesti economy for girls, sloyd, physical exercise, and simple hygiene. All instruction shall be given in strict adherence to the Syllabus of the Primar School Course.

Classes shall not exceed forty pupils. Corporal punishment may be administered, but only in special cases, and with proper safeguards agains cruelty, excess, and humiliation. Backward scholars may be classifie separately. Those who have successfully passed Standard VII. shall receive a "Primary School Certificate," and may remain at school in order to attend continuation classes.

Every primary school shall be under the direction of a principal, and i of the first and second class shall have, in addition, a vice-principal. Enrolment of pupils shall only take place at the beginning of a term.

(c) *Secondary schools.*—Their number shall be limited, and shall be proclaimed by the Governor. Their chief aim is to provide boys and girls with the necessary education in order to enable them either to proceed to a university or to occupy responsible positions in administration, commercial and industrial life, or to become teachers or to qualify for the "Senior Leaving Certificate."

In accordance herewith they shall have three distinct courses of three years each, to be extended to four years if necessary, viz.: (1) classical, to meet the needs of future students in literature, law, and theology; (2) modern, to meet the needs of future students in medicine, science, and engineering; and (3) general, to meet the needs of those who wish either to take up commercial and administrative positions, or to become teachers, or to qualify for the "Senior Leaving Certificate."

Only pupils shall be admitted who shall have obtained the "Primary School Certificate," or satisfied the principal by completing successfully a Primary School Course.

Classes shall not exceed thirty pupils, and all instruction must be in strict adherence to the Syllabus of the Secondary School Course. The rule regarding corporal punishment in primary schools shall also be observed in secondary schools, provided that the Department of Education shall at any time have the right to determine that no corporal punishment shall be administered.

These three different types of school may be combined into one organised whole, under one principal, if circumstances permit, and on certain conditions.

Inspection.—District inspectors shall, as far as possible, at least once in each year visit every Government and aided private school, class, or institution in their respective districts for formal or informal inspection. The rules to be observed by them, their authority, as well as the duties of the members of staff and of school committees towards them, are carefully set out. They have a right to make regulations, while the Department is authorised to appoint special persons for inspection or investigation.

Teachers.—I. *Certification.*—No person shall be admitted to teach in any public or aided private school, class, or institution who does not possess either a professional or a provisional teacher's certificate of the Orange River Colony.

The professional teacher's certificate is divided into four classes, qualifying either for employment in a kindergarten, primary or secondary departments of schools, or for special employment as teachers, or to posts in the Education Department.

The provisional teacher's certificate is of threefold variety, entitling the holder, either conditionally or unconditionally, to teach at any kindergarten, primary, or secondary school, class, or institution.

The minimum requirements for recognition as a teacher shall be either (*a*) the successful training through an approved course of primary education, together with a subsequent and sufficient course of mainly professional training, or (*b*) the successful completion of an approved course of secondary education.

II. *Training.*—For the training of teachers there shall be instituted a "normal course" of three years' duration under the direction of a fully qualified "master (or mistress) of method," and scholars attending the normal course shall be styled "normal students."

The requirements for admission to the normal course, and the nature of the normal course, are set out. The Government shall be allowed to make payment of grants or maintenance allowances to normal students of £10 to £50 on condition that they shall, after having qualified, serve as teachers for a period of from two to four years and repay such advances in conformity with regulations to be framed by the Director.

The requirements in detail are set out for the examinations qualifying for each of the four classes of teachers, viz. those for the kindergartens, primary and secondary schools, and for special employment; the requirements for admission to these examinations, the nature and subjects for examination. All candidates are obliged to have a qualifying knowledge of both English and Dutch.

III. *Staffing.*—The qualifications are set out for principals and vice-principals, and these provide, *inter alia*, that no person shall in future be appointed either as principal or vice-principal unless bi-lingually (English and Dutch) proficient.

IV. *Examinations.*—All provisional teachers require certificates, and the examinations for the various certificates shall be conducted and controlled by a Council of Examiners. Such a Council shall consist of three members, to be appointed for a period of three years by the Governor in Council, one of the members to be appointed as chairman. The Council shall draw up their own rules and make regulations necessary for the proper conduct of examinations, which will be held twice a year, and of which the results shall be reported to the Department of Education.

All examinations shall be conducted in both English and Dutch and all candidates shall have to prove to the satisfaction of the Council their competency to give the necessary instruction through the medium of both languages.

V. *Grading.*—All teachers shall be classified by the Council in accordance with the certificates held by them, and various rules are set out for observation by the Council in their method of classification. In the event of dissatisfaction on the part of any teacher with the decision of the Council, such teacher shall have the right to appeal to the Director of Education with ultimate appeal to the Governor.

Special provisions are made as to how posts are to be filled in future when qualified teachers shall not be available, while transitory rules are set out for the teachers who are already engaged at the time when the Act comes into force. Several rules are made for the supervision by school committees and school boards for teachers regarding their competency and general efficiency.

Teachers holding professional certificates are entitled to admission on the established staff, and the service of such staff shall count from the commencement of the probationary period.

VI. *Salaries.*—Various rules are set out with regard to the salaries of teachers, which are graded according to the certificates held by them.

Rules are made for gratuities to be paid to teachers on their retirement from the establishment staff. Further provisions are made for the salaries of teachers holding provisional certificates.

Auctions.—No. 9 amends Chapter CVII. of the Law Book regarding the payment of auction duty.

Finance.—No. 10 provides for extraordinary expenditure on certain works and other services out of the moneys received from the sale of the shares in the National Bank of the Orange River Colony, Limited, the property of the Government of the Orange River Colony.

No. 16 provides a further sum, not exceeding £62,822, for the public service of the Orange River Colony for the year ending June 30, 1910.

Payment of Members.—No. 15 makes special provisions for the payment of members of the Legislature for the extraordinary session of the year 1910.

5. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Acts passed—15.

Education.—No. 1 abrogates the constitution of the Transvaal University, which was framed under the Transvaal Public Education Ordinance, No. 7 of 1903,[1] and provides new rules for the establishment and incorporation of Transvaal University College, with the object of providing courses of instruction and training, conducting examinations, granting certificates in the arts and sciences and in such other subjects as the Governor may from time to time approve.

The governing body shall be a Council consisting of not less than ten members, to be appointed by the Governor, and they shall hold office for a period of five years. To these the Governor may add, for a similar term, any persons representing donors or representatives of not less than fifty students who have graduated or have been recognised as having graduated. The Council shall elect from amongst themselves a chairman and a vice-chairman. The powers and functions of the Council are set out in full.

The portion, afterwards to be determined, of the piece of ground in Pretoria known as Sunnyside Town lease, and reserved for educational purposes, shall, with the buildings thereon, be invested in the Council, together with all movable assets and other property belonging to the Transvaal University College.

The Governor may from time to time alter, amend, or rescind the provisions of this Act for the better carrying out of the objects and purposes thereof.

No. 2 establishes at Pretoria the Transvaal College of Agriculture, with the object of providing courses of instruction and training, of conducting examinations and granting certificates, in agricultural and veterinary sciences and allied subjects and such other subjects as the Governor may from time to time approve. It shall, further, assist investigation and research in connection therewith.

The governing body shall be a Council consisting of not less than ten members to be appointed by the Governor, and they shall hold office for not less than five years. To these the Governor may add, for a similar term, any persons representing donors or representatives of not less than fifty students who have graduated or have been recognised as having graduated. The Council shall elect from amongst themselves a chairman and vice-chairman. The powers and functions of the Council are set out in full.

Certain portions of the Pretoria Town Lands granted by the Council of the Municipality of Pretoria for agricultural education are vested in the College.

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[1] See *Legislation of the Empire*, vol. ii. p. 446.

No. 4 establishes at Johannesburg the South African School of Mines and Technology with the object of providing courses of instruction and training, of conducting examinations and of granting certificates in mining and engineering as well as other branches of applied science and in such subjects as the Governor may from time to time approve.

The constitution shall be similar to that of the Transvaal College of Agriculture. The governing body to consist of not less than ten members appointed by the Governor for five years, three of them being members of the Witwatersrand Council of Education, or if that Council shall cease to exist, three of the members of council shall represent donors. The Government may add to these representatives of not less than fifty students of the said institution or of the South African School of Mines established in 1896, or of the Transvaal Technical Institute, or of the Transvaal University College, Johannesburg, who have graduated or been recognised as having graduated.

The powers and functions of the Council are set out in full, while the Governor is authorised from time to time to make, alter, and rescind regulations not inconsistent with the Act for the better carrying out of the purposes of the Act.

Certain property, known as Plein Square, which was granted to the Transvaal University College, and all buildings thereon belonging to the said college are transferred and vested in the Council, together with all movable property belonging to the Transvaal University College in connection with the Johannesburg branch thereof.

Mining.—No. 8 amends the Mines, Works, Machinery and Certificates Act, No. 32 of 1909,[1] in so far as the duty of inspectors is concerned to inquire into accidents, for which they are authorised to hold inquiries, and the general powers of inspectors of mines, machinery, and explosives.

No. 13 repeals ss. 82-7 of Act No. 35 of 1908[2] and makes further provisions regulating the trading on ground held under a mining title. No person shall, upon ground held under mining title, carry on any trade or business except (*a*) upon a stand mentioned in ss. 77-9 of Act No. 35 of 1908, or (*b*) upon a trading stand, or (*c*) upon a trading site. The Board constituted under s. 83 of Act No. 35 of 1908 stands abolished and its powers are transferred to the Mining Commissioner. Circumstances are set out under which trading stands may become trading sites, and further provisions are made for the regulation of these trading sites, which have to be beaconed off.

The Mining Commissioner shall act in accordance with instructions of the Minister of Mines. Further regulations may, from time to time, be made, altered, or rescinded by the Governor-General in Council.

Pensions.—No. 9 further amends the Public Service and Pensions Act,

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[1] See Journal, N.S. vol. xi. p. 429.

[2] See Journal, N.S. vol. x. p. 378.

No. 19 of 1908,[1] and the Railway Service and Pensions Act, No. 20 of 1908,[1] by adding in certain events a new period to the period during which an officer has to be employed in order to become entitled to a pension.

Railways.—No. 10 provides for the construction by the Railway Board (1) of a line of railway from either Nelspruit or Alkmaar on the Pretoria-Delagoa Bay line to a point on the farm Graskop No. 27 in the district of Lydenburg near Pilgrim's Rest, and (2) of a line of railway from a point at or near Standerton to Klip River, such line being a portion of a line to be continued from Klip River to Vrede in the Orange River Colony.

Further it contains the ratification and approval of an agreement between the Government, the Railway Board, and the Messina (Transvaal) Development Company, Limited, for the construction of a railway in the Transvaal connecting the Selati extension line with the Messina Copper Mine.

Workmen's Compensation.—No. 11 amends the Workmen's Compensation Act, No. 36 of 1907,[2] by providing for the appointment and use of medical and other assessors in inquiries and legal proceedings under the said Act, and in other respects.

Shops.—No. 14 amends the Shop Hours Act, No. 32 of 1908,[3] and the Shop Hours Amendment Act, No. 29 of 1909,[4] by exempting certain premises from closing hours prescribed in Act 32 of 1908, and regulating the trade in these shops so exempted after closing hours, as well as providing for a register to be kept in such shops of all shop attendants.

Power.—No. 15 provides for the licensing of persons carrying on undertakings for the supply of power and for other purposes.

An Advisory Board is instituted, styled the Powers Undertakings Board. This Board shall consist of five persons, of whom the Government mining engineer shall be a member *ex officio*. The other four members shall be appointed by the Governor.

The object of the Board is to advise the Minister of Mines or any other Minister to whom the administration of the Act shall be assigned upon any matter connected with the administration of the Act. Its powers, jurisdiction, and privileges shall be such as described in the Commission Powers Ordinance, No. 30 of 1902.[5]

Provisions are made for the licensing of all persons—except the council of a municipality—who want to erect or instal any machinery or plant, or carry on or engage in any manner in any undertaking for the supply to any other persons of power exceeding twenty million units in any one year. For the supply of power exceeding this number of units per annum special permission must be obtained from the Minister.

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[1] See Journal, N.S. vol. x. p. 373.

[2] See *Legislation of the Empire*, vol. ii. p. 474.

[3] See Journal, N.S. vol. x. p. 379.

[4] See Journal, N.S. vol. xi. p. 4

[5] See Journal, N.S. vol. v. p. 393.

By power is meant all such power as is derived from electricity or compressed air or from any other source which may be declared by the Governor to be a source for the derivation of power.

The formalities to be gone through for obtaining a licence are fully set out. Special provisions are made for the powers of a licensee to open and break up streets.

Every licensee shall be bound to supply power within the area of supply mentioned in his licence to every person who applies for it, and the licensee shall not be entitled to lessen or discontinue the supply of power stipulated in his contract unless he is prevented by circumstances beyond his control or unless he acts under such special circumstances as are set out in the Act. Provisions are made for the strict observance of these rules and a scale of standard prices is set out which may be charged by the licensee for the supply of power. These charges are subject to a periodical revision, and it shall also be the duty of the licensee not to grant advantages, rebates, or privileges to any consumer.

Further rules are made for the revocation of licences in certain circumstances and the expropriation by the Governor of undertakings after thirty-five years, but in that case the licensee must receive two years' notice and compensation shall be paid for goodwill and other profits.

In the event of a licence being revoked the Governor may cause entry to be made upon the undertaking, but no such entry shall prejudice the interest of shareholders or mortgagees. In case of disputes arbitration is set out, and the provisions of the Arbitration Ordinance of 1900 shall be observed.

Certain provisions are set out regarding offences under this Act. Persons appointed by a licensee shall be entitled to enter any premises to which power is supplied by him in order to inspect the lines, etc. All fittings and works shall continue to be the property of the licensee and shall not be subject to a landlord's hypothec or be taken under a distress warrant in any process of law against the owner or occupier of any premises.

The Minister or any other person authorised in writing by him may enter upon the premises at all reasonable times. Further right of entry is given to any person who obtains authority from the Minister therefor.

Penalties are set out for the unauthorised working of a power-station, for cases of contravention of the Act by companies or partnerships.

With the exception of such regulations as are specially mentioned, all regulations set out in the Act are made by the Governor.

Lastly, the acts are set out which are excluded from the present Act, viz. Irrigation and Water Supply Act, No 27 of 1908,[1] and the Precious and Base Metals Acts, No. 35 of 1908.[2]

Finance.—No. 3 applies a further sum not exceeding £455,353 for the service of the period from July 1, 1909, to May 30, 1910.

[1] See Journal, N.S. vol. x. p. 376.

[2] See Journal, N.S. vol. x. p. 378.

No. 35 applies a sum of £49,840 17*s.* 3*d.* for the purpose of meeting and covering certain unauthorised expenditure during the financial years 1907-8 and 1908-9.

6. SOUTHERN RHODESIA.

Ordinances passed—14.

Census.—The Census Ordinance (No. 1) requires the number of each kind of live stock to be taken as well as the number of persons.

Capital Sentence.—Ordinance No. 4 enacts s. 103 of the English Children Act.[1]

Half-Holidays.—An amendment (No. 5) to the Half-Holiday Ordinance, 1908, authorises a local authority to grant to any shopkeeper permission to keep his employees at his shop during one Saturday afternoon in each year, for the purpose of stock-taking therein.

Rights to Water.—The contractor of a railway may take such water as he requires within fifty yards of the railway. If unable to obtain it there, Ordinance No. 9 authorises to go outside that strip and negotiate with the owner. The primary rights of the owner are preserved and provision is made for arbitration in case of dispute.

Compensation.—When cattle stray on the railway through the fencing being defective and are killed by any train running by daylight, the railway company, by Ordinance No. 10, is made liable to compensate the owner.

Native Affairs.—The High Commissioner's Proclamation No. 55 repeals a Proclamation of 1902 establishing regulations for natives in Southern Rhodesia, and provides anew for the management of their affairs. The Administrator in Council appoints the chiefs and may amalgamate tribes or parts of tribes and generally exercise control over them. Their duties are specified, and the Administrator may appoint headmen to assist them. A Native Department under a Secretary for Native Affairs has the administration. In all cases of disputed chieftainship or tribal quarrels he makes inquiries. For the working of the department the Secretary has the assistance of a number of superintendents of natives, having the power of Native Commissioners, who may be the magistrate or assistant magistrate in districts where such officers are stationed. The Native Commissioner has authority to try minor cases in civil proceedings between natives, and criminal proceedings in which the accused is a native. Each Native Commissioner has a staff of native messengers. Detailed provision is made against dishonesty or malicious influence. The Native Commissioner may fix the number of huts to compose a kraal, and the heads of kraals are required to direct attention to offences committed within their area. The general tenor of the Proclamation is to bring some pressure to bear if natives fail to recognise their obligation as citizens in maintaining order and protecting the safety of the community.

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[1] 8 Ed. VII. c. 67.

7. HIGH COMMISSIONER'S PROCLAMATIONS.

The sixty-four Proclamations made in 1910 include some purely local in application and a few administrative in character. The more important are reviewed below and arranged according to the territories in which they have operation.

BAROTZELAND.

Customs.—In view of the dissolution of the South African Customs Union, Proclamation No. 45 makes further provision for the imposition and collection of customs duties within the territory.

Death Sentence.—Proclamation No. 47 is similar to No. 34 for Basutoland.[1]

Registration of Deeds.—By Proclamation No. 57 a Registry of Deeds is established at Livingstone for the registration of deeds of transfer or conveyance of land and of deeds mortgaging or charging land for the payment of money or fulfilment of contractual obligations, and of other deeds and instruments, according to the provisions of the Proclamation.

BASUTOLAND.

Intoxicating Liquors.—Proclamation No. 1 enacts that "it shall not be lawful for any person to sell, purchase, give, receive, supply, or in any manner whatsoever dispose of or accept any intoxicating liquor within the limits of Basutoland," and imposes penalties for any contravention of its object. A provision allowing its sale for medicinal purposes is repealed by Proclamation No. 24, which requires any person selling it to have a licence, obtainable by a medical practitioner free of charge, but at the cost of £1 to an apothecary, chemist, or druggist. By a further Proclamation (No. 63) any person having the written permission of the Resident Commissioner, any officer of a Court, or any officer of customs in the exercise of his duties may sell any spirituous or distilled perfume or perfumery or medicated or methylated spirits to white persons of European descent. Any white person of European descent may give to another any intoxicating liquor " by way of hospitality, provided that no consideration in money, goods, or services be paid, allowed, rendered, or agreed upon in respect of or in connection with such gifts."

Constitution.—In 1903 a Council was established consisting of representatives of the inhabitants of the territory for the purpose of discussing its domestic affairs. Various modifications have been made in the constitution from time to time. The whole is now embodied in Proclamation No. 7. The

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[1] See *infra*, p. 465.

Resident Commissioner presides over a council consisting of one hundred members. The paramount chief is an *ex officio* member, and may nominate ninety-four other persons belonging to the Basuto tribe, including the principal persons exercising authority as chiefs, to be members for one year. The Resident Commissioner must approve the nominations, and also has power to appoint annually four members. Members of the Council may be paid. A financial statement is submitted annually to the Council. Draft laws may be laid before the Council for an expression of their opinion, and the Council may also discuss and suggest any amendments in a Proclamation of the High Commissioner affecting Basutoland. The Resident Commissioner, in consultation and co-operation with the paramount chief, may constitute a committee of the Council to hear any question or disputes of a purely tribal character arising between natives, and their opinion thereupon shall be reported to the High Commissioner.

Importation of Bees.—In order to prevent the introduction among bees of the disease known as "foul brood," Proclamation No. 15 forbids the importation of bees without the written permission of the Resident Commissioner. The importation is also forbidden from any place outside South Africa of honey in combs or extracted, bees-wax foundation comb, used beehives or used beehive accessories or appliances or anything that has been used to contain or manipulate bees or bees-wax.

Cattle Diseases.—Owing to the prevalence of East Coast fever in Cape Colony, Proclamation No. 22 forbids the importation of any cattle from the Colony, or any seeds, grass, hay, straw, kraal manure, or any other article likely to act as a carrier of ticks.

Civil Service.—The regulations for employment in the public service of the territory are embodied in Proclamation No. 25.

Death Sentence.—Sentence of death is not to be pronounced upon any one under the age of sixteen by Proclamation No. 34.

Customs.—On account of the dissolution of the South African Customs Union, Proclamation No. 49 makes further provision for the imposition and collection of customs duties.

Appropriation.—Proclamation No. 62 provides for the expenditure of the year to the amount of £112,686.

BECHUANALAND.

Co-operative Agricultural Societies.—The object of Proclamation No. 25 is to provide for the formation, registration, and management of co-operative agricultural societies within the Protectorate upon the lines which have been found useful elsewhere.

Importation of Bees.—Proclamation No. 17 corresponds with No. 15 applicable to Basutoland.[1]

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[1] See *supra*, p. 465.

Civil Service.—Proclamation No. 26 is similar to No. 25 for Basutoland.[1]

Appropriation.—Provision is made for the finance of the Protectorate by Proclamation No. 30 to an estimated amount of £70,875.

Death Sentence.—Proclamation No. 35 is similar to legislation for Basutoland[2] and elsewhere forbidding sentence of death to be passed upon any one under the age of sixteen.

Customs.—The dissolution of the South African Customs Union renders necessary Proclamation No. 50 to make further provision for the imposition and collection of customs duties.

Bills of Exchange.—The provisions of the Cape Bills of Exchange Act 1893,[3] are extended to the Protectorate by Proclamation No. 53.

Criminal Law.—Part I. of the Cape Act of 1882[4] for the suppression and punishment of certain minor offences is applied to the protectorate by Proclamation No. 64.

SWAZILAND.

Courts.—By an amendment to the Swaziland Administration Proclamation, 1907, Proclamation No. 3 provides for the establishment of Courts of the Assistant Commissioner to have jurisdiction in all civil proceedings in which neither party is a European and in criminal proceedings in which the accused is not a European; provided always that a Court of Assistant Commissioner shall not have jurisdiction to try summarily any person charged with treason, murder, attempt to murder, culpable homicide, rape, attempt to commit rape, or sedition.

Dogs.—Proclamation No. 4 contains the conditions for the registration and control of dogs.

Licences.—By Proclamation No. 6 every company carrying on banking business within the territory is required to take out a licence for every head or branch office. The cost for the first or only office is £50, and for every other office £25.

Finance.—A series of loans made by the Government of Basutoland to the Swaziland Government are consolidated by Proclamation No. 8.

Water.—Previous legislation on the subject of water rights in Swaziland is repealed by Proclamation No. 11, dealing with the whole subject. The first part sets forth the power of the administration in regard to public streams and water. The second part distinguishes between public and private water, and regulates the rights in and uses of each. Boards of adjustment are authorised for the purpose of settling disputed questions. The fourth part deals with the appropriation of land for public purposes and the acquisition of servitudes.

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[1] See *supra*, p. 465.

[2] See *supra*, p. 465.

[3] No. 19 o 1893.

[4] No. 27 of 1882.

Mining Rights.—The machinery set up by Proclamation No. 11 for the settlement of disputes is also to be used by the authority of Proclamation No. 12 to determine questions arising between the owners of mineral rights and the surface owners, so that the mining and agricultural resources of the country may be developed simultaneously. Proclamation No. 13 is of a similar character to determine difficulties about the right to timber, the right of grazing, and the right of cultivation on the land granted in connection with mineral rights, and to secure that such rights should not be exercised on native areas in a manner inconsistent with the full and sufficient enjoyment, use, and occupation of such areas by natives.

Forests Preservation.—The object of Proclamation No. 14 is to make more effectual provision for the preservation of trees and forests grown on Crown lands.

Importation of Bees.—Proclamation No. 16 corresponds with No. 15 applicable to Basutoland.[1]

Stamp Fees.—The tariff of stamp fees is amended by Proclamation No. 18.

Registration of Deeds.—By Proclamation No. 19 a "Deeds Office" is established at Mbabane under the charge of a Registrar of Deeds.

Cattle Diseases.—Proclamation No. 23 provides measures for the eradication of the disease amongst cattle known as East Coast fever. Small amendments are made by Proclamation No. 48.

Civil Service.—Proclamation No. 27 contains the regulations for employment in the public service similar to No. 25 for Basutoland.[2]

Death Sentence.—The Transvaal Criminal Procedure Code, 1903,[3] has been applied *mutatis mutandis*, and is amended by Proclamation No. 36 so as to forbid the pronouncement of sentence of death against any one under the age of sixteen.

Arms and Ammunition.—Members of rifle clubs may have by Proclamation No. 37 a licence for a rifle free of charge.

Native Concessions.—The object of Proclamation No. 39 is to secure the better protection of the rights of natives in the areas set apart for their use. Proclamation No. 52 deals with the payment and allocation of costs in connection with the survey of concessions.

Appropriation.—The expenditure of the territory is provided for by Proclamation No. 41 to the amount of £45,133.

Customs.—Owing to the dissolution of the South African Customs Union, Proclamation No. 51 makes certain modifications in the imposition and collection of customs duties.

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[1] See *supra*, p. 465.

[2] See *supra*, p. 465.

[3] See *Legislation of the Empire*, vol. ii. p. 445.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. GAMBIA.

Ordinances passed—14.

Public Health.—Three laws as to public health are consolidated with amendments. The result is a compendious statute of 126 clauses, covering most of the ground of our Public Health legislation. The administrative authority is a Board of Health, presided over by the principal Medical Officer of Health, the other members being the Senior Medical Officer, the Colonial Engineer, and six others appointed by the Governor.

The main subjects dealt with are nuisances, privies, water, slaughter-houses, infectious disease notification and prevention, streets and buildings. We may note as to burials that interment in other than authorised burial grounds is prohibited, except under special licence of the Governor. Amenities are also to be respected, *e.g.* erections are not to be placed on the beach or on open spaces without special leave of the Governor, and penalties are imposed on persons beating drums or tom-toms in the streets.

Public Officers' Guarantee Fund.—Every officer may be required to contribute annually to the fund 1 per cent. of the amount for which he has to give security. That amount is to be fixed in each case by the Governor, but is not to exceed £500 (No. 4 amended by No. 10).

Customs.—Foreign consuls representing certain powers (U.S.A., Mexico, and Cuba) are entitled to exemption from customs duties if they are not engaged in trade. The exemption may be extended by the Governor to Consuls of other Powers (No. 7).

Uniforms.—The Ordinance of 1895, which followed the U.K. Act of 1894 prohibiting the wearing of naval or military uniforms by unauthorised persons, is amended by a provision prohibiting the import of any such uniform (No. 10).

Coroners.—Commissioners in the Protectorate are authorised to Act as coroners without juries: in such case the Commissioner is to be "the sole judge of all matters, whether of fact or law, arising" at the inquisition (No. 11).

2. GOLD COAST.

Ordinances passed—14.

Motor-Cars.—The principal Ordinance of 1907 is amended in some particulars; *inter alia*, the fees on licences are altered, while the existing power of the Governor to exempt a person from any fee is retained in case of Government cars, or "where it appears desirable to encourage experiments in motor traffic on roads not hitherto used for that purpose." The policy of imposing more than a nominal duty in West Africa appears doubtful.

Loans.—Power is taken to raise a loan of £1,035,000 for Accra Harbour, Railway and Waterworks, the Sekondi Harbour and Waterworks, and the Tarquah-Broomassie Railway.

Native Jurisdiction.—The principal Ordinance of 1883 is amended by No. 7 in many particulars, so many as to make the law somewhat confusing. It would have been better to reissue the whole Ordinance.

The Legislation for the NORTHERN TERRITORIES and ASHANTI consists of two Ordinances in each case, correcting existing Ordinances in small particulars.

3. SIERRA LEONE.

Ordinances passed—27.

Public Officers' Guarantee Fund.—Sierra Leone and the neighbouring Colony of the Gambia have each passed Ordinances constituting Guarantee Funds, to which officers must contribute in respect of the security which they must give for the faithful performance of their duties. It is now provided by Sierra Leone Ordinance (No. 4) that the Fund of the Gambia is to be merged in that of Sierra Leone. All Regulations proposed to be made in Sierra Leone are to be previously submitted to the Gambia Government, likewise the drafts of any amending Ordinances, and both Regulations and Ordinances are subject to disallowance by the Secretary of State.

Capital Sentences.—Sierra Leone follows the lead of other Colonies in prohibiting capital sentences in the case of juveniles under the age of sixteen (No. 12).

Coroners.—An amendment in coroners' law is made by No. 13. A coroner may require a medical officer to make a preliminary examination of the body and to report as to the cause of death, and if the coroner is satisfied that the circumstances do not require further investigation, an inquest need not be held.

Customs.—Matches made with white or yellow phosphorus are absolutely prohibited to be imported into the Colony (No. 15).

Mosquitoes.—A drastic law (No. 16) provides that where mosquito larvæ are discovered in any collection of water, or in any well, pool, channel, barrel, tub, etc., the occupier of the premises shall be liable to a fine of £1.

False Publications.—The person who prints or publishes any statement which is "misleading and calculated to do harm" by reason of a mis-statement or implied mis-statement or suppression of facts, "if the statement relates to a matter of public interest or concern" is liable to a fine of £5 on summary conviction. The law is somewhat vague, and its working will be watched with interest. Probably it will serve to protect the Government and its officers. In England such a law would be hailed with acclamation in many quarters, and our daily press would do well to take note (No. 17).

Census.—Provision was made by No. 26 for taking the census of the Colony in 1911. The Ordinance contains the usual provision, and it need only be noted that the schedule provides for a statement of the religion of each person.

4. NORTHERN NIGERIA.

Proclamations passed—9.

Liquor.—"No person shall within the Protectorate of Northern Nigeria either distil, rectify, or make any spirits, or sell any spirits so distilled, rectified, or made within the Protectorate." Exception is made of spirits distilled with the sanction of the Governor for purely commercial and industrial purposes (No. 2). The law provides otherwise for imported spirits. Thus the next Proclamation (No. 3) imposes a customs duty of 5*s*. per gallon on all imported spirits.

Matches.—White phosphorus matches are prohibited by No. 4, as in Sierra Leone.

Police.—Provision is made by No. 5 for the establishment of a police force for the Protectorate. The law is normal in form.

Public Officers' Guarantee Fund.—A law on this subject (No. 6) is in form similar to those of the West African colonies.

Cotton.—The Governor may make rules for maintaining or improving the quality of cotton, either in reference to the distribution and use of seed, or to the inspection of seed, crops, ginneries, or factories, and may prohibit the use of any particular kind of seed, and may prohibit the use or exportation of cotton of inferior quality, and may prohibit any method of sowing, collecting, ginning, or otherwise preparing cotton (No. 7).

Minerals.—The conditions under which prospecting licences and mining leases are to be granted in Africa have now become more or less stereotyped, and Proclamation No. 8 follows the most recent models. Minerals are classed under four heads—(1) Metalliferous (gold, silver, tin, etc.); (2)

Carbonaceous (coal, etc.); (3) Earthy (clays, potash, soda, sulphur, etc.); (4) Precious stones.

Statute Law.—All proclamations, etc., in force on July 31, 1910, are repealed, and the compendium of law scheduled to the Proclamation (No. 9) is substituted, each chapter to be treated as a separate Proclamation.

5. SOUTHERN NIGERIA.

Ordinances passed—18.

Destructive Pests.—Power is given to the Governor to make orders for preventing the introduction of any insect, fungus, or other pest destructive to agricultural or horticultural crops (No. 2).

Capital Sentences.—Sentences of death on juveniles, under the age of sixteen, are prohibited, as in other West African colonies (No. 6).

Harbour Dues.—The following harbour dues are to be levied at Lagos: *2s. 6d.* per ton on cargo imported or exported, *2s.* per head of first- or second-class passengers arriving or departing, and *1s.* per head of other passengers. These duties are not, however, to be levied so long as the maximum limit of draught for vessels crossing Lagos Bar is less than 16 feet. In other words, the new dues are for the purpose of recoupment of expenditure on the harbour (No. 9).

Post Office Savings Bank.—Any sum at a savings bank account remaining unclaimed for five years after the last deposit or withdrawal is to be placed to a separate account. Thereupon the name of the depositor is to be published in three issues of the *Gazette* during three years; if not claimed within that period it is to lapse to the public revenue.

Postage Stamps.—The Governor may by three months' public notice pronounce the demonetisation of stamps from particular dies. A notice appears to have been issued in 1908 demonetising the stamps of Queen Victoria, but apparently doubts have existed as to its authority. The present Ordinance is perfunctorily drafted, as it contains a schedule to which no reference is made in the text (No. 12).

Alcoholic Liquor.—The liquor question in Southern Nigeria has during recent years attained much notoriety, due to the complaints of the English missionary societies and the inquiry carried out under Royal Commission. The Colony derived a revenue of nearly £700,000 from imported liquor in 1908; on the other hand, the Commissioners report that "the natives have not yet learned the art of distillation, but they have always been alcohol drinkers." They drink a palm wine, which in ordinary circumstances is slightly stronger than English beer, but which if allowed to ferment for any length of time becomes highly intoxicating. The present Ordinance (No. 13) prohibits distillation of spirits except under licence, and there is an excise duty equivalent to the customs duty (*5s.* per gallon of 50° Tralles).

Mosquitoes.—Southern Nigeria deals with this pest differently, but not less drastically, than Sierra Leone. The Health Officers may take immediate steps to destroy mosquito larvæ on any private premises, and it is an offence for an occupier to have any water receptacle containing larvæ, or "to allow on his premises any reasonably preventable conditions which may in any way be favourable to the breeding of mosquitoes" (No. 16).

Trade Marks.—A new Trade Marks Ordinance (No. 18) supersedes the existing law of 1908, following the normal lines of English legislation on this subject.

VII. EAST CENTRAL AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. EAST AFRICA.

Ordinances passed—29.

Tariff.—The tariff is reconstituted by Ordinance No. 1 in substitution for that of 1904. As to import duties, all distilled liquors pay Rs. 5 per gallon at 50 degrees (Gay Lussac alcoholometer); all other goods pay a general *ad valorem* duty of 10 per cent. But there is a large and generous table of exemptions, including personal baggage, horses and mules, live stock for breeding purposes, railway plant, trees, seeds, etc., for cultivation, coal, every kind of agricultural machinery and implements, all printed matter, and everything imported for the use of Government or the naval and military services. The export duties are varied: thus gum copal, which paid 15 per cent., is reduced to 6 per cent. Plantation rubber is exempted. Horses pay Rs. 21 each, camels Rs. 4, and donkeys Rs. 2.

Hut Tax.—The existing law of 1903 is replaced by No. 2 of 1910. Every native (presumably adult male) has to pay a hut tax of Rs. 3 a year for each hut owned by him. He gets one wife free, but has to pay in respect of every additional wife living in any hut. In place of the hut tax the Governor may levy a poll tax on adult males of "proclaimed tribes" of Rs. 3 a year. When a native cannot pay the tax, he may give labour instead. If incapable of labour he may be exempted. The Governor may also exempt tribes from the poll tax.

Justices of the Peace.—Now that there is an appreciable European population in East Africa, it has been thought proper to provide (No. 3) for the appointment of justices of the peace, so that the preliminary stages of justice may be taken without resort to the distant Courts. The justices are to be appointed by the Governor, and we find no requirement that he is to have regard to their party politics.

Native Labour.—Laws of 1902, 1906, and 1907 are consolidated, with amendments, by No. 4. The new law deals with contracts for service both without and within the Protectorate, apprenticeship, disputes between master and servant, and care of servants.

Diseases of Plants.—The Governor is empowered (No. 7) to make regulations for preventing the importation of any insect pest, or plants liable to be infected by any pest or plant disease.

Maize.—Before maize is exported from any prescribed port, it must be certified to be free of weevils (No. 8).

Banks.—Banks carrying on business in the Protectorate must transmit to the Governor two copies of the deed, memorandum, and articles, or other documents showing their constitution. Banks whose head offices are outside the Protectorate must appoint a resident agent by power of attorney. No bank is allowed to issue any bank notes. Non-British banks must also furnish the names of their directors and shareholders, and particulars of the share capital. These foreign banks must also appoint auditors (subject to the Governor's approval), who have to report twice a year on the balance-sheets. Every British bank must forward to the Governor two copies of every statement made by them under s. 108 of the Companies Act, 1908, and of every list and summary made under s. 26 of that Act (No. 10).

Registration of Titles.—The purposes of the Land Titles Ordinance, 1908, which provides for a person obtaining from the Court a certificate of ownership, are extended by No. 11 of 1910. Those certificates are registered, and there may also be registered every document affecting the holding. If such document is not registered, it is void against all persons claiming an adverse interest on valuable consideration by virtue of any subsequent document duly registered. Exceptions are made in case of fraud and notice. No lien, charge, or mortgage can be created except by a registered instrument, with a saving for equitable mortgages and wills. The Ordinance of 1908 is further amended by No. 22.

Roads.—If a chief agrees with the Governor that a road or bridge ought to be constructed in his district, he may require all able-bodied men within the district to labour on the work not exceeding six days in each quarter. Any person refusing to work is liable to punishment according to native customary law, or to a fine of Rs. 15 (No. 12). The purpose of the law is to get roads made in native reserves, places where it would be impossible to do this otherwise than by forced labour. Properly supervised, the system has been found satisfactory in the East during the early years of European rule. As money increases in circulation, however, it is found to be more economical to tax the people, and employ only skilled labour on the roads.

With the same end in view, another Ordinance (No. 19) provides that the Governor, when he has occasion to punish a village or district under the Collective Punishment Ordinance, 1909 (noticed in our last year's review), may require the erring community to exert themselves on road-making.

Railways.—An Ordinance of over 150 sections (No. 13) comprises much of the enactments found in our Railway Clauses Acts and Regulation of Railways Acts, dealing with both construction and working.

Registration of Vessels.—Provision is made by No. 17 for the registration of vessels on Lake Victoria. They are to be registered in three classes: (1) Vessels of 15 tons and upwards, (2) vessels under 15 tons navigated by steam or sail, and (3) vessels under 15 tons navigated by oar.

Public Officers' Protection.—An Ordinance (No. 23) requires actions against public officers to be commenced within six months after the cause. The provision follows the English law, and supersedes s. 424 of the Indian Civil Procedure Code, which deals with the matter differently, *i.e.* restrains the institution of proceedings against a public officer until the expiration of two months after notice.

Registration of Servants.—A register of domestic servants is to be kept, comprising both those in actual service and those wanting places (No. 24). On registration the servant is supplied with a pocket register, in which are recorded the dates and particulars of his successive employments. On the cessation of an engagement the master has to enter in the pocket register the date and cause of cessation. He may decline to state the cause of a dismissal, but in such case he must furnish to the Registrar a statement of the cause in writing. The servant must attend at the Registry within fifteen days after the master's entry, so as to enable the Registrar to register the entry. It is an offence on the part of a master to fail to make the required entries, or to employ a person who is not supplied with a pocket register; on the part of the servant to give false information, to destroy or falsify his pocket register, etc.

Petitions of Right.—Suits by the Government of the Protectorate are to be brought by the Crown Advocate; suits against the Government are to be preferred against the Crown Advocate as defendant (No. 25). In the latter case the consent of the Government is required. If a decree is made against the Government, a copy of the decree is sent to the Governor, who by warrant is to order the payment of the sum awarded. The Ordinance is in supersession of chap. xxvii. of the Indian Civil Procedure Code.

Medical Practitioners.—Registration of medical practitioners and dentists is provided for by No. 26, the Ordinance following normal lines. There is a saving for "the practice of systems of therapeutics according to native, Indian, or other Asiatic method by persons recognised by the community to which they belong to be duly trained in such practice."

Reformatory Schools.—Schools of this character may be established by the Governor, provision being made for Courts to send juvenile offenders to them, also for the superintendent to permit by licence the employment of any such offender by trustworthy persons. The Governor has large powers of regulation (No. 29).

2. UGANDA.

Ordinances passed—17.

Bhang.—The smoking of bhang is prohibited under a penalty of three months' imprisonment or a fine of Rs. 500 or both (No. 2).

Matches.—No. 3 is a law prohibiting white or yellow phosphorus matches as in other colonies.

Tariff.—A new tariff law (No. 6) is similar to that of East Africa, described above.

Elephants.—Special provisions are made as to elephant shooting in place of those in the Game Ordinance of 1906. As to elephants there is no "reduction of price on taking a quantity." The fee for shooting one is Rs. 150; for two, Rs. 450. The unlucky sportsman who takes out a licence for one, and returns empty-handed, gets no consolation; but another, who takes out a licence for two and kills only one or none, gets a rebate of Rs. 300. Elephants must not be killed with tusks of less than eleven pounds. A licence under this Ordinance is in addition to the general sportsman's licence.

Newspapers.—The proprietor of every newspaper started in the Protectorate must give a bond for Rs. 3,000 conditioned to meet any fine that may be imposed for criminal libel (No. 9).

Motor Cars.—A motor-car law (No. 11) is surely an indication of progress. It follows English lines, but there is no speed limit, and the Governor may prohibit the use of motor cars on particular roads. A scale is provided of maximum dimensions of cars and of minimum widths of tyres proportionate to weight of engine.

Appellate Jurisdiction.—An appeal lies from sentences passed in the High Court in its original criminal jurisdiction to the Court of Appeal for Eastern Africa; in cases in which the High Court is itself an appellate Court, an appeal lies to the Court of Appeal only where the High Court has convicted on an appeal from an acquittal.

An appeal from the High Court lies in all civil cases, whether in its appellate or original jurisdiction, but no appeal lies where all the parties are natives of the Protectorate except with the leave of the Governor. There is also no appeal, except on leave of the High Court or Court of Appeal, where the subject-matter does not exceed Rs. 1,000, or in cases of bankruptcy (No. 12).

Crown Lands.—The Governor may sell or lease lands upon which there are natives, but they must not be removed until satisfactory arrangements are made for their location elsewhere. If the natives choose to remain after such arrangements have been offered, they are to be deemed tenants at will of the owner or lessee of the land (No. 13).

Roads.—Work on roads may be required of tribes in lieu of fines under the Collective Punishment Ordinance, as in East Africa (No. 17).

3. SOMALILAND.

Ordinances passed—5.

Political Detention of Natives.—Power is taken to detain and remove natives proved to the satisfaction of a District Officer to be dangerous to the peace of the Protectorate (No. 2). The Commissioner may give orders as to the place of detention, and may revoke or vary the order of the District Officer. It seems a little doubtful whether the power of detention should be given to any but the highest officer in the territory.

Capital Sentences.—No. 4 prohibits death sentences on juveniles.

4. NYASALAND.

Ordinances passed—12.

Traders' Licences.—This Ordinance (No. 1) covers general traders, hawkers, and auctioneers. The annual duties are: For general trading, £25; for retail trading, £5; hawkers, £2; auctioneers, £2. Native traders are exempt. The general trading licence extends to both wholesale and retail, but on one set of premises. There is an additional fee of £2, in the case of both general and retail licences, for each additional set of premises.

Mineral Oils.—The provisions as to oil in the Mining Ordinance of 1906 are repealed, and Ordinance No. 5 now makes separate provision for licences to work mineral oils in the Protectorate.

Cotton Growing.—General control of the cotton industry is given to the Governor by No. 7. He may make rules for distinguishing between native and other cotton, for regulating the issue of cotton seed to natives, for regulating the planting, cultivation, harvesting, and sale of native-grown cotton, for dealing with diseases affecting cotton, for regulating the importation of cotton seed, and generally. The rules must be observed under penalty of fine.

Savings Bank.—A savings bank is to be established in connection with the Post Office (No. 10). The maximum allowed to be kept on deposit is £200. Interest is paid on deposits at 2½ per cent.

Capital Sentences.—The now prevalent prohibition of capital sentences in the case of juvenile offenders is extended to Nyasaland (No. 11).

Registration of Documents.—All documents purporting to grant or transfer land or any interest in land for a longer period than one year are null and void unless registered within the prescribed time (No. 12)—that is to say, in the case of documents executed outside the Protectorate, within three months after date of the Ordinance, or date of execution; in the case of those executed within the Protectorate, within six weeks after the date of the Ordinance or date of execution. Wills affecting land take effect on registration, but wills registered within three months after the testator's death take effect as at that date.

VIII. SOUTH ATLANTIC.

[*Contributed by* EDWARD MANSON, ESQ.]

1. ST. HELENA.

Ordinances passed—6.

Medicine (No. 1).—No person is to practise medicine or surgery in the Colony for fee or reward unless he proves himself possessed of qualifications which would enable him to practise in the United Kingdom, on peril of a fine of £20, or one month's imprisonment in default of payment.

Forging Trade Stamps (No. 2).—Forging any trade stamp used by any Government official for stamping any articles to be exported from the Colony is made an offence punishable with a fine of £20, or four months' imprisonment with or without hard labour.

Supply.—Nos. 3 and 4.

Children and Death Sentence (No. 5).—Sentence of death is not to be passed or recorded against a child or young person, but in lieu thereof the Court shall sentence the child or young person to be detained during his Majesty's pleasure.

2. FALKLAND ISLANDS.

Ordinances passed—3.

The Ordinances this year relate only to supply.

IX. NORTH AMERICAN COLONIES.

1. THE DOMINION OF CANADA.

[*Contributed by* J. G. ARCHIBALD, ESQ.]

Acts passed—Public, 37; Private, 117.

The legislation of the 1908-9 session contains little that is new in principle. The bulk of the Acts passed either amend recent legislation on points of detail, or extend and apply to new subject-matters principles already familiar.

Criminal Law (No. 9).—This Act contains a large number of amendments to the Canadian Criminal Code, particularly in respect of the summary procedure before magistrates.

Among alterations of substance may be noted increased severity in the penalties against procuring, inciting to prostitution, and the like, and the prohibition of opium "joints" or dens.

The Secret Commissions Act (No. 33) adopts in substance the Imperial Prevention of Corruption Act, 1906, dealing with frauds and breaches of duty on the part of agents.

External Affairs (No. 13).—A new Department of External Affairs is created under the control of the Secretary of State. This department shall carry on all official communications between Canada and foreign countries relating to external affairs, shall deal with all matters connected with the foreign consular service in Canada, and in general shall perform all such functions relating to international or intercolonial negotiations as may be assigned to it by the Governor-General.

Food Products and Fertilisers (Nos. 16 and 17).—These two important statutes regulate the sale of artificial foods for domestic animals and artificial fertilisers. All dealers in such articles must take out an annual licence, and each brand offered for sale must be registered, together with a guaranteed analysis of its composition. Every package in which the article is sold shall bear upon it the name and address of the manufacturer, the name and registration number of the brand, and a copy of the guaranteed analysis.

Inspectors are to be appointed, whose duty it will be to take samples of articles so sold for analysis. The results of all analyses so made will be published annually.

Labour (No. 22).—A separate Department of Labour is created, with a Minister of Labour at its head. The new department shall be charged with the administration of the Conciliation and Labour Act, and the Industrial Disputes Investigation Act, 1907, and such other duties as may be assigned to it by the Governor in Council.

Conservation of Natural Resources (No. 27).—The Minister of Agriculture, the Minister of Mines, and the Minister of the Interior, together with the several provincial ministers having control over natural resources in their respective provinces, and twenty additional members to be appointed by the Governor-General, shall constitute a commission to be known as "The Conservation Commission." Of the appointed members at least one from each province shall be drawn from the faculty of a university within the province.

It shall be the duty of the Commission to take into its consideration all questions which are brought before it relating to the conservation and better utilisation of the resources of the country, and to make such inventories, collect and disseminate such information, and frame such recommendations as it may deem conducive to that end.

Railways (Nos. 31 and 32).—These statutes contain a large number of amendments to the Railway Act. The jurisdiction of the Railway Board is extended in dealing with disputes, and better provision is made for the safety of railway crossings. A fund is established, called "The Railway Grade Crossing Fund," for the latter purpose, and $200,000 a year for five years is appropriated thereto by the Government.

Steamship Subsidies (No. 36).—Power is given to the Governor in Council to enter into a contract for a steamship service between a French and a Canadian port, and to grant for that purpose a subsidy at the rate of $100,000 for fifteen round trips a year, but not exceeding in any event $200,000.

MISCELLANEOUS MINOR ACTS.

An Act to amend the Government Annuities Act (No. 4).
An Act to amend the Extradition Act (No. 14).
An Act to amend the Navigable Waters Protection Act (No. 28).

2. PROVINCE OF BRITISH COLUMBIA.

[*Contributed by* J. G. ARCHIBALD, ESQ.]

Acts passed—Public, 54; Private, 28.

The legislation for this session has covered a wide range of topics, including companies, municipal government, coal mines, drainage, irrigation, children, the liquor traffic, and education.

Among the laws presenting points of interest to the student of comparative legislation, the following may be noted:

Companies (No. 7).—This statute revises and consolidates the whole company law of British Columbia. In the main it follows the Imperial Companies (Consolidation) Act, 1908, but is not without peculiar features. Thus: by s. 39 executors and trustees incur no personal liability upon shares held by them in that character. By s. 40, the same rule is applied to pledgees and mortgagees.

S. 47 gives power to a company, merely by special resolution, to distribute accumulated profits in reduction of paid-up capital, on the footing that it may be called up again later, if required.

S. 64 enables certain land companies to pay out in dividends the net proceeds of sale of lands, such payments to operate as a reduction of capital.

S. 68 gives power to provide by the memorandum that the liability of directors or managers shall be unlimited.

SS. 131 *et seq.* permit the creation of certain mining companies with a special form of limited liability. Holders of partly-paid shares incur no personal liability for calls. If default is made, the shares are forfeited and sold by auction.

By s. 139 all companies incorporated outside the Province are required to register and obtain a licence before carrying on business within the Province.

Game (No. 22).—This Act increases the stringency of the existing game laws. Licences, for which considerable fees are payable, must be taken out by all persons other than those resident in the Province, and the number of certain animals killed, *e.g.* moose, wapiti, caribou, deer, is severely restricted.

Liquor (No. 30).—This statute deals in detail with every phase of the liquor traffic. It restricts the number of licences, insists on the temporary and discretionary character of the grant of a licence, and foreshadows further legislation in the same sense.

Great care is taken that no licence shall be granted except in accordance with the wishes of the inhabitants of the district.

Notice of application must be given by advertisement published for at least thirty days in a local newspaper, and the application must be accompanied by a petition in its favour, signed by not less than two-thirds of the householders of Caucasian races resident within the district, and also by a similar proportion of their wives and grown-up children.

Those opposed to the application are at liberty to petition in a contrary sense.

No new licence shall in any event be granted until justified by the population of the district.

With regard to the actual sale of intoxicants, it is provided that no liquor shall be sold in any hotel to persons apparently under the influence of liquor, minors, Indians, vagrants, tramps, prostitutes, persons having the reputation of being drunkards, or drivers of motor vehicles plying for hire. Further, no liquor shall be supplied to any woman in the bar premises.

By s. 75 similar restrictions are applied to the sale of intoxicants in any place or manner whatsoever to the above classes of persons.

Large powers of supervision and inspection are given to the police, and licences may be suspended or cancelled without any formal inquiry being held.

Wage-earners' Liens (No. 31).—This Act is designed to give workmen, employed by a contractor in doing work upon property, a direct security for their wages as against the owner of the property.

The Act applies to all kinds of operations upon land, such as building, clearing, ditching, fencing and the like, and imposes a duty upon the owner, before paying the contractor, to require production of a receipted pay roll. All sums which appear thereby to be still owing to the workman must be retained, and the owner is thenceforth responsible therefor to the workman. No payment to the contractor, which is made without requiring production of the pay roll, or without retaining the sum which appears thereby to be owing to the workman, shall be of any effect as against the latter.

All works and buildings and all lands benefited thereby shall be subject to a lien to secure the amounts so owing.

A similar lien is created for the benefit of persons supplying materials for the erection of buildings, etc.

The Act contains detailed provisions concerning the expiration, cancellation, registration, and enforcement of the lien.

Schools: Health Inspection (No. 45).—This statute makes thoroughgoing provision for the medical examination of school children. Besides guarding against infectious and contagious diseases, the inspectors are required to make a general examination of each child at least once a year and especially to test their condition with regard to eyesight, hearing, teeth, throat, and the like.

MISCELLANEOUS MINOR ACTS.

No. 1.—Any interest in an old age annuity granted under S.C. 1908, No. 5, shall be exempt from seizure or attachment, and shall not be affected by any charges, trust, or lien.

No. 10.—The Juvenile Delinquents Act, 1908 (S.C. 1908, No. 40), is put into force and provision is made for the establishment of Juvenile Courts.

No. 15.—Provincial Elections Amendment Act, 1910. No judge of any Court shall be entitled to vote.

No. 16.—All premises, works, and appliances for generating electricity shall be subject to Government inspection, with a view to preventing accidents.

No. 54.—Woodmen are given similar rights against lumber merchants as are created by No. 31 *supra* in favour of workmen employed upon land.

3. PROVINCE OF MANITOBA.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—Public, 34; Private and Local, 16.

Dogs (No. 3).—Dogs proved to be mischievous to travellers or horses, of given to pursuing horses or cattle or sheep, may be ordered by a justice or the peace to be killed, under a penalty of $2 for every day such dog is allowed to live after the order.

Architects (No. 4).—This Act provides for the registration of architects. A provincial board of examiners is to be appointed, who are empowered to make rules for the examination of applicants for certificates to practise as architects. Architects already practising are to be entitled to a certificate without examination. No unregistered architect is to practise under a heavy penalty. Every architect must renew his certificate annually.

Protection of Children (No. 13).—No child over twelve and under sixteen is to hawk or sell newspapers or other articles in the streets during school hours without a licence from the superintendent of neglected children.

Any constable may seize any cigarette or tobacco in the possession of any child under sixteen whom he finds smoking in any street or public place. Any constable or school teacher is also empowered to search any boy whom he suspects on reasonable grounds to have in his possession any obscene book, or any picture, photograph, model, or other object tending to corrupt morals, and if found to confiscate and destroy it.

Coroners (No. 14).—This deals with the appointment and fees of coroners, their inquests, and the procedure thereon.

Industrial Home (No. 29).—An industrial home for the Province is constituted, for the moral training and reclamation of boys and girls committed for confinement therein, and power is given to the Lieutenant-Governor in Council to make rules for the management and discipline of the home, the punishment and rewards of the inmates. To encourage good behaviour, a record is to be kept of conduct which may earn a remission of sentence.

Noxious Weeds (No. 47).—Where noxious weeds are growing, and in danger of going to seed on lands not in crop, an inspector may notify the owner or occupant to cut down such weeds within five days; in default, penalties.

MISCELLANEOUS ACTS.

Agricultural Societies Act amended (No. 1).
Bills of Sale Act amended (No. 4).
Charity Act amended (No. 12).
Corporations, Licensing of Extra-Provincial Act, amended (No. 15).
County Courts Act amended (No. 16).

Distress Act amended (No. 20).
Education Department Act amended (No. 22).
Elections Act amended (No. 23).
Evolution of Estates Act amended (No. 19).
Executions Act amended (No. 24).
King's Bench Act amended (No. 17).
Gaols Act amended (No. 25).
Grain Elevators, purchase of, by Government (No. 27).
Insane Asylums Act amended (No. 30).
Land Drainage Act amended (No. 21).
Law Society Act amended (No. 34).
Liquor Licences Act amended (No. 35).
Live Stock Industry, Government grant towards (No. 36).
Marriage Act amended (No. 37).
Motor Vehicles Act amended (No. 39).
Municipal Acts amended (Nos. 40, 41, 42, 43, 44, 45).
Public Parks Act amended (No. 50).
Public Schools Act amended (Nos. 51, 52).
Rural Local Improvements (No. 46).
Sanatorium for Consumptives Act amended (No. 57).
Steam Boilers Inspection Act amended (No. 68).
Surrogate Courts Act amended (No. 28).

4. PROVINCE OF SASKATCHEWAN.

[*Contributed by* Edward Manson, Esq.]

Revised Statutes (No. 2).—Saskatchewan has recently been consolidating its statute law. This Act sanctions, with the necessary provisions, the printed roll embodying such revision.

Elections (No. 5).—The Elections Act is amended in a number of details of no general interest, relating mainly to the registration of voters and the revision of the lists.

Bureau of Labour (No. 8).—The Department of Agriculture is to have attached to it a Bureau of Labour, with a secretary and necessary officers. The functions of such Bureau are to "collect, assort, systematise, and publish information and statistics relating to

(*a*) employment, wages, and hours of labour throughout the Province;
(*b*) strikes or other labour difficulties;
(*c*) co-operation, trades unions, labour organisations;
(*d*) the relations between capital and labour and other subjects of interest to working men;
(*e*) the commercial, industrial, and sanitary conditions surrounding working men; and

(*f*) such other matters as relate to the permanent prosperity of the industries of the Province."

Workmen's Compensation (No. 9).—This is an Act on the lines of the English Act of 1907. It applies to workmen on railways, in factories, mines, engineering works, and quarries. If in any employment to which the Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer is to be liable to pay compensation in accordance with the provisions of the Act.

No contracting out is allowed. The employer is to be liable though the workman contributed to or was the sole cause of the injury or death by reason of his own negligence or misconduct. In the case of sub-contracting the principal is to remain liable, as if the injured workman had been immediately employed by him. The amount of compensation is not to exceed three years' estimated earnings or $1,800, whichever is larger, and is not to be capable of being assigned, charged, or attached.

Sanatoria for Consumption (No. 10).—A body corporate is constituted under the name of the Anti-tuberculosis League, with power to establish sanatoria and hospitals for the treatment of tuberculosis and appoint medical superintendents. Inmates able to pay may be charged. Persons unable to pay may be admitted on the request of mayors, overseers, or reeves. Municipalities and boards of health are empowered to make gifts or grants in favour of such sanatoria.

Public Buildings: Egress (No. 11).—In all churches, theatres, halls, school-houses, and other public buildings the doors are to be so hinged as to open freely outwards. Regulations may be made by the Lieutenant-Governor in Council regarding the licensing, using, and operating of cinematographs, moving-picture machines, or other similar apparatus, and constables and peace officers are given a power of inspection.

Maintenance of Deserted Wives (No. 14).—A married woman is "deserted" within the meaning of this Act "when she is living apart from her husband because of his acts of cruelty or of his refusal or neglect without sufficient cause to supply her with food and other necessaries when able to do so." A wife so "deserted" may summon her husband before the judge of the district Court, and such judge, if satisfied of his ability, may order him to pay her a weekly sum not exceeding $10. No order is to be made in favour of a wife who has committed adultery unless such adultery has been condoned.

Companies (No. 16).—A new scale of fees for registration and capital duty is provided. Companies formed to promote recreation among their members and not for gain are empowered, with the sanction of the Provincial Secretary, to dispense with the word "Limited."

Foreign Companies (No. 17).—The Foreign Companies Act is amended by a new scale of fees.

Architects (No. 30).—This is an Act for organising architects as a professional body. A Council of Management is appointed, with power to make regulations. Students may be admitted and examined, and no person not registered as a member of the association is, after the passing of the Act, to practise as an architect.

Optometry (No. 31).—Optometry is defined as "the measurement of the powers of vision and the adaptation of lenses for the aid thereof." It seems to combine the functions of the optician and oculist. A Council of Optometry is established, and only persons who satisfy it in certain particulars may practise.

Chemists and Druggists (No. 32).—These are organised under the title of the Pharmaceutical Society of Saskatchewan, under the management of a Council. Persons approved by the Council, and who have passed the necessary examinations, are to be registered as members. No unregistered persons are to sell or dispense drugs or medicines. No person is to sell any of the scheduled list of poisons to any person unknown to the seller unless the intending buyer is introduced by some one known to the seller, and on every such sale the particulars are to be entered in a book in a scheduled form.

Dairies (No. 33).—No dairy company is to erect any building in the Province for manufacturing butter or cheese until the site and the plans and specifications have been approved by the Minister of Agriculture.

Stray Animals (No. 34).—No stallion of a year old or bull of nine months is to be allowed at large. A person finding an "estray" on his land is to advertise two notices of it in the *Saskatchewan Gazette*, and meanwhile to provide the estray with food and shelter. If unclaimed the finder may, after application to a justice, sell the estray. Pound-keepers may be appointed by the Minister.

Fences (No. 35).—Persons erecting boundary fences are to share the expense.

Motors (No. 37).—Every motor is to carry a proper alarm bell, gong, or horn, and lamps after dusk. A motorist who knows he has done injury to person or property and does not stop is liable to a fine of $200. No person under sixteen is to operate a motor.

Sale of Goods in Bulk (No. 38).—The object of this Act is to prevent frauds on creditors. Every trader or merchant selling stocks of goods in bulk is to furnish the purchaser with a written statement—in the scheduled form—verified by statutory declaration of the names and addresses of all his creditors. In default the sale is to be fraudulent and void. A purchaser receiving such a statement must either obtain a written waiver of their rights from the creditors or pay over the purchase money to them.

MISCELLANEOUS MINOR ACTS.

City Act amended (No. 18).

Devolution of Estates Act amended (No. 13).

District Courts Act amended (No. 15).
Land Titles Act amended (No. 12).
Liquor Licences Act amended (No. 36).
Local Improvements Act amended (No. 22).
Municipal Telephone Act amended (No. 23).
Public Works (No. 6).
Railway and Telephone Department (No. 7).
Rural Municipality Act amended (No. 21).
School Act amended (No. 26).
School Assessment Act amended (No. 27).
Secondary Education Act amended (No. 25).
Statute Law amendment (No. 40).
Town Act amended (No. 19).
University Act amended (No. 24).
Village Act amended (No. 20).

5. PROVINCE OF ONTARIO.

[*Contributed by* J. D. CASSWELL, ESQ.]

Acts passed (Public, Private, and Local)—153.

Legislative Assembly (No. 3).—The Legislative Assembly Act is amended by an Act which provides for an indemnity to be paid to members of the Legislative Assembly. If the session does not extend beyond thirty days, an indemnity will be paid to every member for each day's attendance; if the session extends beyond thirty days, a fixed sessional allowance will be paid, but deductions will be made from this for every day on which a member has been absent without reasonable excuses. Final payment will be made to every member at the close of the session on his signing an oath stating the number of days' attendance and the distance he has to travel.

Electricity in Mines.—No. 10 provides numerous regulations framed to safeguard the workers in mines from the dangers arising from the use of electrical apparatus.

Statute Law Amendment.—By No. 17 numerous minor amendments and additions are made, of which the following may be noticed:

Married Women's Property Act.—"Where any freehold hereditament is vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance" (s. 36).

Agricultural Societies.—Special grants shall be made to Agricultural Societies where their gate-receipts have been affected by the weather (s. 49).

Public Schools Act is amended and provision is made for rural schools to be erected jointly by agreement between city school boards and the boards of contiguous rural sections (s. 35).

Execution.—A section is added to the Execution Act making real estate chargeable with the owner's debts (s. 34 (6)).

Accidental Fires (No. 19).—In future no action will lie against a person from whose premises fire is accidentally communicated.

Vexatious Actions.—Public authorities are protected from vexatious actions by the provisions of No. 22. This Act, which is a consolidating Act, provides protection for three classes—Justices of the Peace, constables, and persons acting under public authority. No action will lie against any of these except under certain specified circumstances.

Law and Transfer of Property.—No. 25 consolidates and amends in details the law on this subject.

The following new provisions are introduced :

A receipt, whether contained in the body of a conveyance or endorsed thereon, shall be deemed sufficient evidence of payment in favour of a *bona fide* subsequent purchaser (s. 7).

When two or more persons acquire land they shall be considered as tenants in common and not as joint tenants (s. 14).

A covenant relating to land not of inheritance, nor held for the life of another, shall be deemed to be made with the executors, administrators, and assigns of the covenantee (s. 19 (2)).

Landlord and Tenant.—The law on this subject is amended and consolidated by No. 37. The few provisions which are new are as follows: The rent and benefit of a lessee's covenants and also the obligation of a lessee's covenants are to run with the reversion. Where a severance occurs of the reversionary estate of any land comprised in a lease, every condition contained in that lease will be apportioned and will remain annexed to the severed parts of the reversionary estate so severed. Another provision enacts that a sub-lessee shall not have a right to call for the title to the reversion in the absence of any contract to the contrary. In the case of forfeiture provisions are made for reasonable notice to be served on the lessee and for the Court to grant such relief as it thinks fit. The Court is further empowered to protect under-lessees on the forfeiture of superior leases. Another important addition is to the effect that, in the absence of any expressed agreement to the contrary, licence to assign a lease must not be unreasonably withheld although the lease contains the usual covenant against assigning and underletting.

Local Improvements (No. 58).—This Act amends the Consolidated Municipal Act, 1903. The works which may be undertaken as local improvements are described and rules are laid down as to the apportionment of the cost of such improvements. The procedure for undertaking these works is amended and it is enacted that no notice need be served upon premises in cases where the business and residence of the owner are unknown and where no "grown-up" person is residing on the premises. The Clerk of the Council is given power to determine the sufficiency of petitions, the rights of owners to petition and the value of their lots; and for this purpose he may hear witnesses on oath. An appeal is provided to a County Court judge in cases where the Clerk's signature is alleged to have been obtained by fraud, misrepresentation, or duress. Several new provisions regulate the procedure for making a special assessment both where the land assessed is abutting on the work and also where it is not directly abutting, but has aggravated the expenses of construction.

Milk (No. 69).—By the Ontario Milk Acts the municipal councils are authorised to pass by-laws for regulating milk produced, offered for sale, and sold within their municipalities. These by-laws are to include the granting of licences to milk vendors and the fixing of standards. The municipal councils are further authorised to appoint inspectors to see that the requirements of the Act are carried out.

The Act prescribes in detail the conditions which must be complied with in order to obtain a certificate from the local medical health officer. Unless such a certificate has been obtained, the term "certified" must not be applied to the milk.

Consolidating Acts.

In addition to the Acts quoted above, Consolidating Acts have been passed chiefly collecting and in part amending the law on the following subjects:

Coroners, with a few additional provisions (No. 23).

Voluntary and Fraudulent Conveyances (No. 24).

Trustees. A new power is given to trustees to renew leases and raise money for that purpose (s. 23) (No. 26).

Land Titles and Custody of Documents relating thereto (Nos. 27 and 28).

Water Privileges (No. 29).

Conditional Sales of Goods (No. 30).

Apprentices and Minors (No. 31).

Solemnisation of Marriage (No. 32).

Compensation for Fatal Accidents (No. 33).

Maintenance of Wives (No. 34).

Infants (No. 35).

Illegitimate Children (No. 36).

Study of Anatomy (No. 38).

Dentistry (No. 39).

Pharmacy (No. 40).

Land Surveyors and Survey of Lands (Nos. 41 and 42).

Architects (No. 43).

Stenographic Reporters (No. 44).

Stationary Engineers (No. 46).

Saw Log Cutters (No. 47).

Chartered Accountants (No. 48).

Innkeepers (No. 49).
Pawnbrokers (No. 50).
Embalmers (No. 51).

MINOR MISCELLANEOUS ACTS.

Alcohol, sale by chemists, further regulated (No. 64).
Apportionment Act passed (No. 21).
Backward children, special classes for (No. 78).
Drainage, Provincial aid to (No. 12).
Electricity, Local Distribution of (No. 14).
Electricity Power Commission Act amended (No. 15).
Industrial Education, founding of Schools for (No. 79).
Injured Animals, destruction of, by police officers and inspectors of humane societies (No. 75).
Liquor Licences Act amended (No. 64).
Lunacy Act, provisions extended (No. 20).
Offensive Weapons, sale of, regulated (No. 66).
Public Health Acts amended (Nos. 67 and 68).
Public Highways Improvement Act amended (No. 11).
Surrogate Courts Act amended (No. 18).
Voters' Lists Act amended (No. 2).

6. PROVINCE OF QUEBEC.

[*Contributed by* J. D. CASSWELL, ESQ.]

Acts passed (Public, Private, and Local)—147.

Election Act (No. 11).—The Act amends the Quebec Election Act and provides a penalty for directly or indirectly distributing or providing money, food, or drink before the day of voting with the purpose of influencing the electors.

Public Utilities (No. 14).—The Revised Statutes, 1909, respecting the Utilities Commission are amended. The Commission is empowered to investigate and decide disputes as to the tolls and charges made by Public Utilities, and may make orders for the extension of the service provided by them. The Commission may also exercise a general supervision subject to the legislative authority of the Province.

Mining (No. 23).—The Quebec Mining Law is amended, and the following provisions are added. All mining concessions granted since July 1, 1911, are subjected to an annual tax. This, however, will be remitted upon proof that the sum of $200 has been expended on mining work on the concession during the year. Provision is made for the reversion to the Crown of concessions as to which two years' arrears are due. The law with regard to the duration, extent, and renewal of mining licences is also amended.

Sale of Drugs (No. 35).—By this Act the sale of cocaine, morphine, and their compounds is regulated. In future no one may sell these drugs except to wholesale dealers, licensed druggists, and certain others, and these must have previously ordered the drugs in writing, and must be personally identified by some person known to the seller. Holders of prescriptions may also be supplied under certain conditions. In addition to these precautions a special register has to be kept by the vendors, which shall be open to inspection by coroners and others. The possession of these drugs is also forbidden except in certain circumstances, and a search warrant may issue for the purposes of search and seizure.

Bread (No. 40).—The sale and weight of bread are regulated; loaves must be made in fixed sizes, except in cities and towns. There bread may still be sold by weight, but each loaf must bear a label mentioning the exact weight and the baker's name. The penalty for non-compliance with these regulations is a fine or imprisonment in default of payment.

Insurance (No. 44).—In an Act amending the Quebec Insurance Act, provisions are inserted of which the more important are those dealing with "companies or associations formed for the purpose of providing a pension" and the appointment of "provisional guardians" to insurance companies, mutual benefit associations, etc. In the case of pensions the Act provides for a deposit of at least $5,000 to be lodged with the Treasury Department by companies carrying on this kind of business by way of security for the persons insured. It also provides regulations to ensure that all promises of pensions shall be based on scientific calculations. The duties of the "provisional guardians" will be to control insurance companies and societies whose licences have been suspended or cancelled. They will be appointed by the Provincial Treasurer.

MINOR MISCELLANEOUS ACTS.

Bees, Protection of, Revised Statutes, 1909, amended (No. 22).
Bridges Act amended (No. 38).
Bridges, Municipal Code amended (No. 57).
Education. Pensions to Teachers amended (No. 27).
Elections. Controverted Elections Act amended (No. 13).
Farmers' Clubs, additional grants to (No. 19).
National Battlefields, 8 Ed. VII. No. 3, amended (No. 6).
Registrars and Registry Offices Act amended (No. 49).
Roads, subsidies to municipalities for making, Revised Statutes, 1909, amended (No. 21).
Syndicates Act amended (No. 43).
Townships, annexation of, Municipal Code amended (No. 56).
Township Forest Reserves, Revised Statutes, 1909, amended (No. 17).

7. NEWFOUNDLAND.

[*Contributed by* Edward Manson, Esq.]

Acts passed (Public, Private, and Local)—40.

Arbitration (No. 1).—The Board of Trade may appoint Committees of Arbitration and also Committees of Appeal for settling such matters in difference as are voluntarily submitted to them. An award is to have the effect of a judgment of the Supreme Court.

Pharmacy (No. 4).—A board called the Newfoundland Pharmaceutical Society is constituted to make rules for holding examinations for druggists, and candidates passing are entitled to be registered as qualified druggists. No person unless so registered may sell drugs. All poisonous drugs—a list of which is scheduled—must be labelled "Poison."

Trade Unions (No. 6).—Trade union here means "any combination whether temporary or permanent for regulating the relations between workmen and masters or between workmen and workmen or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business." Trade unions may be registered under the Companies Act, 1899. The mode of registering is prescribed by s. 13. The Imperial Act, 38 & 39 Vict. c. 36, entitled the Conspiracy and Protection of Property Act, 1875, and the Trades Disputes Act, 1906, are adopted, and are to apply to all trade unions registered under the present Act.

Marriages (No. 11).—Any duly appointed commissioner, staff officer, or captain of the religious society called "The Salvation Army," appointed for the purpose and duly licensed by the Governor, may solemnise marriages under No. 133 of the Consolidated Statutes.

Railways.—No. 12 provides for the extension of the railway system of the Colony.

Lady Barristers (No. 16).—This Act, after reciting that "it is desirable that women should not be excluded from practising at the Bar, nor from being enrolled as solicitors of any Court in this Colony," goes on to enact that where in No. 54 of the Consolidated Statutes (Second Series), entitled "Of the Law Society Barristers and Solicitors," the word "person" occurs, it is to be held to extend to and to include a female person, "so as to confer upon all women the right to be entered as clerks, admitted as law students, enrolled as solicitors, and called to the Bar, and to exercise fully all the rights and to impose upon them all the obligations which are conferred and imposed upon men under the provisions of the said chapter."

"**Royal Mercy**" (No. 17).—His Excellency the Governor is hereby empowered to remit any penalty or forfeiture on a convicted offender, and to extend the Royal mercy to any person who may be imprisoned for non-payment of any sum, though such sum may be in whole or part payable to some party other than the Crown.

Agriculture (No. 18).—For the encouragement of agriculture the Minister may pay out of any moneys in his hands for the following:

(1) The compilation of agricultural or farm notes for the local press.
(2) The delivery of lectures on agriculture throughout the Colony.
(3) The compilation of an agricultural primer for schools.
(4) The encouragement of cold storage in agricultural localities.
(5) Salaries of experts giving instruction in the cutting and drying of peat.

Woollen Manufacture (No. 19).—A premium of 5 per cent. is granted—for the encouragement of such manufacture—on all wool imported into the Colony, and on all wool raised and manufactured into wearing apparel, blankets, rugs, etc., in factories where more than ten persons are usually employed.

Discovery of Minerals (No. 21).—Any person who makes any discovery of minerals in the Colony, on making application for a licence to work them may file a claim with the Minister of Agriculture and Mines, who is to give notice of such claim in the *Royal Gazette* and to call upon all persons opposing it to give notice of objection. If no objection is notified before the expiration of sixty days, the claimant is to be deemed the true first and original discoverer.

Cold Storage.—No. 31 authorises the Governor in Council to guarantee persons, firms, or companies engaged in the cold storage business on certain terms.

MINOR MISCELLANEOUS ACTS.

Dentists Act, 1906, amended (No. 3).

Education. The Education Acts of 1903 and 1905 amended (No. 9).

Intoxicating Liquors. The Act of 6 Ed. VII. No. 17 amended (No. 5).

Magistrates, jurisdiction of stipendiary, under s. 4, No. 5, of 1 Ed. VII. extended (No. 15).

8. BERMUDA.

This Legislation will appear next year.

X. THE WEST INDIES.

1. THE BAHAMAS (1911).

[*Contributed by* HARCOURT MALCOLM, ESQ., *on behalf of the Bahamas Bar Association.*]

Acts passed—23.

Tariff (No. 1).—The Tariff Amendment Act, 1911, substitutes four new schedules for the four schedules to the Tariff Act, 1908. Two of the schedules, viz. the second—duties on exports—and the fourth—prohibited imports—are merely reproductions of the two corresponding repealed schedules. Considerable changes were made in the first schedule—duties on imports—both by the increase in amount of the specific duties and by the transfer to this schedule of many articles from the Duty Free Schedule. The Act also increases the *ad valorem* duty from 20 per cent. to 25 per cent.; imposes a surtax of 10 per cent. on the duties on spirits, etc.; and also repeals the rebate of 10 per cent. on spirits, etc., imported in wood. The Act was given a retrospective effect as from March 28, 1911.

Holidays (No. 2).—The Public Holidays Act, 1911, consolidates four Acts relating to holidays. It omits Ash Wednesday as a holiday and substitutes for it the first Monday in August. The Governor is empowered to appoint special holidays and also to substitute another day as a holiday in lieu of a statutory day. The hours of attendance of public officers are regulated by the Act and the Governor is empowered to lengthen them. The Act applies to all banks.

Infectious Diseases (No. 3).—The Infectious and Contagious Diseases Amendment Act, 1911, substitutes an enlarged schedule of diseases for the schedule to the Act of 1902 and also gives power to add to such diseases by Order-in-Council.

Dogs (No. 4).—The Dog Amendment Act, 1911, enables the extension of the provisions of the Act of 1907 to any settlement on an Out Island instead of to the entire island as provided for in that Act.

Interpretation (No. 5).—The Interpretation Act, 1911, consolidates three previous Acts dealing with this subject. Except for the addition of a few new terms there is not much new matter in this Act.

Stamp Duties (No. 6).—The Stamp Act, 1911, is the consolidation and expansion in modern form of four other Acts dealing with this subject. The most important discretionary powers given to the executive are (1) to direct fees of courts or offices to be paid in stamps instead of in money, and (2) to direct the use of impressed or adhesive stamps. While, with the exception of bonds, no important increase is made in the amount of the duties, the list of documents liable to the duty is considerably added to.

Medical Officers (No. 7).—The Medical Department Act, 1911, provides for the reorganisation of the medical department of the Colony. The most important change is the creation of the office of Chief Medical Officer and the substitution of a colonial surgeon for the assistant surgeon. The Act consolidates nine Acts and parts of Acts including all Acts dealing with the Bahamas General Hospital and Out Island medical officers.

Marine Products (No. 9).—The Marine Products Board Continuance Act, 1911, continues the Act of 1907 for five years.

Sponge Fisheries (No. 9).—This Act prohibits aliens from sponging in the waters of the Colony. In view of legislation in connection with the Australian and Ceylon pearl fisheries and also of the recent Russian Bill regulating the White Sea Fisheries this Act would appear to be justifiable on grounds in addition to the one that it is but an extension of the principle accepted in the Bahamas Act, 4 Ed. VII. No. 13 repealing 2 Ed. VII. No. 5.

Expiring Laws (No. 10).—The Expiring Laws Continuance Act, 1911, continues thirteen Acts for five years and four Acts until the Public Markets and Slaughter Houses Act, 1911, comes into force.

Prisons (No. 11).—The Prisons Act, 1911, is largely a consolidating Act, but it is also designed to make clear the law with regard to the creation or establishment and maintenance of prisons in the Colony.

Public Markets and Slaughter Houses (No. 12).—The Public Markets and Slaughter Houses Act, 1911, consolidates eleven Acts and parts of Acts, covering the period from 1850 to 1900.

There is practically no new matter in it and it is little more than a modern version of the Acts it repeals.

Commissions of Inquiry (No. 13).—The Commissions of Inquiry Act, 1911, is a reproduction of the Commissions of Inquiry Act, 1909. There are a few additions, but none is of great importance. Provision is made for the payment of expenses.

Public Authorities' Protection (No. 14).—The Public Authorities' Protection Amendment Act, 1911, corrects the omission of two sections from the principal Act of 1908.

Public Boards (No. 15).—The Public Boards Act, 1911, collects provisions dealing with this subject which were scattered among other Acts. It also adds to these provisions. It prescribes qualification for membership, method and time of appointment, creates a board, a corporation, exempts members from civil liability, provides for the making of rules, deals with the question of a majority and casting vote, prevents a vacancy from vitiating action of Board, and deals with several other matters relating to the internal management of public boards.

Health (No. 16).—The Health Amendment Act, 1911, does away with an *ex officio* Chairman of the Board, but preserves the right of the Commandant of Constabulary as an *ex officio* member.

Abutments (No. 17).—The Abutment Building Extension of Time Act, 1911, extends for ten years the right to build out into the harbour of Nassau certain abutments lying to the north of Bay Street.

Pensions (No. 18).—The Herbert Arthur Brook Pension Act, 1911, enables the Governor in Council to grant a pension of £200 a year to the Hon. Herbert Arthur Brook, I.S.O.

Personal Allowance to Joseph Knowles (No. 19).—The Joseph Knowles Personal Allowance Act, 1911, grants a personal allowance of £25 a year to Joseph Knowles.

Police (No. 20).—The Police Amendment Act, 1911, permits the re-enlistment from year to year for a maximum period of ten years of men who have served twenty-one years. The man so re-enlisted will not, however, be entitled to further pension. The Act also provides a contribution for the maintenance of the police band.

Roman Catholic Vicar Forane (No. 21).—The Roman Catholic Vicar Forane Incorporation Act, 1911, creates or constitutes the present Roman Catholic Vicar Forane in the Bahamas and his successors in office a corporation capable of holding property and vests in such corporation all property in the Colony now vested in the Roman Catholic Archbishop of New York and the Very Reverend Chrysostom Schreiner, O.S.B.

The Wesleyan Methodist Association (No. 22).—The Wesleyan Methodist Trust Association Act, 1911, enables the Wesleyan Methodist Trust Association, a company registered in London under the Imperial Companies Acts, 1862-1893, upon compliance with certain requirements, to acquire and hold and deal with real and personal property in the Colony; and vests in such company all property in the Colony now held by any person for and on behalf of the Wesleyan Church except such as is vested in a legally constituted body of trustees.

Supply (No. 23).—The Appropriation Act, 1911, grants £22,031 9*s.* 10*d.* for the performance of public works and for the payment of various claims against the Colony.

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1910)—34. Additional Act passed (1909)—1.

1909.

Customs (No. 30).—The Customs Establishment (Amendment) Act, 1909, amends the like Act (1905, No. 27) by making the customs establishment consist of a Comptroller of Customs and twenty-two officers, instead of a Comptroller and sixteen officers.

1910.

Expiring Laws (No. 2).—The Expiring Laws Continuance Act, 1910, continues until March 31, 1911, the original and amending Acts set out in the schedule to the Act.

Motors (No. 4).—The Motor Omnibus Company, Limited, Act, 1910, exempts from all duty such motor omnibuses as are to be used as omnibuses within the meaning of the Omnibus, Livery and Hackney Carriage Act, 1900, and all materials required for the repairs of the same as from September 3, 1908, but upon any sale of such articles the duty thereon is to be paid.

Wesleyan Property (No. 6).—The Wesleyan Property Act, 1910, vests all the real and personal property in Barbados of "the Wesleyan Missionary Society" in the Wesleyan Methodist Missionary Trust Association (incorporated under the Imperial Companies Acts), in trust for the use of the said Society.

Property and Conveyancing (No. 7[1]).—The Property and Conveyancing Act, 1910, amends the like Act of 1891 (No. 25) so as to enable the assignee of a debt to sue in his own name either at law or in equity for the recovery of the same. It provides that every contingent remainder created by any instrument operating after June 1, 1910, valid as a springing or shifting use or executory devise had it not had a sufficient estate to support it as a contingent remainder, is, if the particular estate determines before the remainder vests, to be capable of taking effect as if originally created as a springing or shifting use or executory devise or other executory limitation. In instruments operating after June 1, 1910, executory limitations arising on failure of the issue of a person taking an estate of fee, etc., to be void as soon as any one of such issue attains the age of twenty-one years.

Petroleum (No. 11).—The Oil Refining Concession Act, 1910, gives an exclusive right to the concessionnaire named therein to manufacture from petroleum produced in Barbados kerosene and other mineral oils for the term of fifteen years from January 1, 1911. The concession is voidable either upon the cessation of manufacture at any time during the period of fifteen years or if the concessionnaire within twelve months from the commencement of the Act is unable to prove to the satisfaction of the Governor in Executive Committee that £50,000 has been subscribed and one-fourth paid up for the purpose of mining and boring in the island and that such operations had been started.

Trade (No. 15).—The Trade Act, 1910, is divided into eleven parts, regulating matters relating to general trading, as follows: (1) Ports and quays; (2) Entry and clearance of ships; (3) Tonnage dues; (4) Importation; (5) Warehousing; (6) Exportation; (7) Passengers and baggage; (8) Bilge water; (9) Smuggling; (10) Legal procedure; (11) Miscellaneous provisions relating to Comptroller's duties: quarterly returns; settlement of disputes as to import duties, tonnage dues, and harbour fees; customs officers; register of shipping; liberty of importation to chemists and druggists and medical practitioners of spirits for preparation of medicines at same rate of duty as the excise on rum; power to Governor in Executive Committee to make rules and regulations; penalties; contracts for sale and delivery of goods duty paid to be amended in the event of duties being subsequently raised or lowered by the seller or buyer respectively.

The Trade Acts of the following years are totally repealed: 1891, 1897, 1899, 1900, 1902, 1903, 1905, and 1908; and s. 4 of the Rum Duty Act,

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[1] This Act extends to Barbados the following provisions of the Imperial Acts: Judicature Act, 1873 (36 & 37 Vict. c. 66, s. 25, sub-s. 6), as to assignees of debts; the Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33), omitting, however, contingent remainders created by will or codicil; the Conveyancing Act of 1882 (45 & 46 Vict. c. 39, s. 10) as to executory limitations.

1895, and the Provisions in Duties (Time of Payment) Act, 1903, as to goods liable to customs duties.

The schedule contains forms of report of entries, bonds, certificates, etc., of clearances, etc.

Intestates (No. 16).—The Intestates' Estates Act, 1910, in the case of intestates dying without issue and leaving a widow and whose whole estate is under £500, gives the same to the widow absolutely; if the estate exceeds £500, then £500 to belong to the widow absolutely and the whole estate to stand charged with the payment thereof with 6 per cent. per annum interest from death of the intestate: the foregoing provision for the widow to be in addition to any share she may be entitled to in the residue of the estate after payment of the £500.

Census (No. 17).—The Census (Barbados) Act, 1910, fixes Sunday, April 2, 1911, as the day on which the census is to be taken, and makes all necessary provisions as to forms, appointment of commissioners and enumerators, and otherwise in relation to the taking and preparation of the census.

Bank Holidays (Nos. 19 and 33).—The Bank Holidays (Amendment and Further Amendment) Acts, 1910, amend like Act of 1905 by adding to the statutory bank holidays "the ninth of November (Edward the Peacemaker's day) if a week day," and providing that if Christmas day falls on a Sunday the following Tuesday shall be added as a Bank holiday.

Savings Banks (No. 24).—The Savings Banks (Amendment) Act, 1910, fixes the salaries of the actuary and clerks at £500 a year for the actuary and from £60 to £250 for each of the clerks, according to rank. The interest to depositors is raised to £3 per cent. per annum.

Pews and Sittings (No. 26).—The Churches and Chapels (Sittings) Act, 1910, enables the vestry and churchwarden of each parish, in conjunction with the rector, to make rules and regulations as to the sittings in the parish churches and in chapels under control of the vestry, such rules to be subject to the sanction and approval of the Lord Bishop of the Diocese. In the case of chapels not under control of the vestry the rules are to be made by a Committee of Management consisting of the vicar or officiating minister for the time being and from four to six pew-holders. The election of the Committee of Management and the application by such committee of the pew-rents are, together with powers to prevent disturbances, etc., provided for.

Public Companies (No. 30).—The Companies Act, 1910, repeals as from January 1, 1911, the existing Companies Act of 1892 and extends to Barbados the general details of the Companies Consolidation (Imperial) Act, 1908. The division into Parts are: (1) Constitution and incorporation; (2) Distribution and reduction of share capital, registration of unlimited company as limited, unlimited liability of directors if so provided by the memorandum of association; (3) Management and administration generally; (4) Winding up; (5) Registration and fees; (6) Application of Act to companies formed and registered under former Companies Acts; (7) Winding up of unregistered companies; (8) Requirements as to companies established outside Barbados; (9) Supplemental: Legal proceedings, penalties, repeal of existing Acts subject to savings incidental thereto. *Schedules:* I. Table A. Regulations for management of a company limited by shares, fees payable on registration form of statement to be published by banking and insurance companies and deposit, provident, or benefit societies; II. Statements in lieu of prospectus; III. Forms of memorandum and articles of association of a company limited by shares and of a company limited by guarantee, both with and without a share capital, and of an unlimited company having a share capital.

3. BRITISH GUIANA.

[*Contributed by* SIR T. CROSSLEY RAYNER, K.C., *Attorney-General.*]

During the year twenty-six Ordinances have been passed. Of these only one is a private Ordinance, and the rest may be classed as public general Ordinances.

No Ordinances of first-class importance were passed, and no less than twelve of them were Ordinances amending Ordinances previously passed.

The more important Ordinances are the following:

Customs Duties (No. 2) and **Tax** (No. 3) are the Ordinances under which the revenue of the Colony for the financial year 1911-12 is raised, the former being the Ordinance under which customs duties are levied, and the latter that under which the inland revenue is raised.

Immigration (Exemption) (No. 5).—There are now in the Colony a large number of persons of East Indian descent who were born in it, but whose parents came from India as indentured immigrants. Under the immigration law these persons are classed as immigrants, and for certain purposes remain under the immigration law, chiefly for their own protection, but a number of them desire to be free from all connection with the immigration law, and to relinquish their special rights and obligations under it, and to become ordinary subjects of the King and to come under the ordinary law of the Colony. Under this Ordinance such persons can make a declaration to that effect, and receive a certificate from the head of the Immigration Department, after which they cease to be in any way under the immigration law, and become merged in the general population of the Colony as ordinary citizens.

The Ordinance also removes all Chinese from under the immigration law. Many years ago a number of Chinese came to the Colony as indentured immigrants, and their descendants are still here, but the immigration of indentured Chinese labourers has long since ceased. For the future no Chinese will be subject to the immigration law.

Territorial Force (No. 7).—This Ordinance was passed to enable members of the English Territorial Force who are in this Colony to be attached to the local forces of the Colony for training, and while so attached to be under the same discipline as members of the local force to which they are attached.

Quarantine (No. 8).—Of late years a number of Ordinances (no less than five) have been passed to give effect to a Convention made between British Guiana and several West Indian Colonies for a uniform quarantine law. The Convention and the regulations made under it have been amended from time to time, hence the various Ordinances above referred to, and the Ordinance now in question has been passed to consolidate all these Ordinances (which are repealed by it) and to incorporate the latest amendments made in the Convention and regulations.

Mining (Duty on Profits) (No. 9).—Hitherto the revenue from the gold industry of the Colony has been obtained by a royalty on the gold won, but in order to assist persons engaged in large mining operations, and to encourage mining on a large scale, this Ordinance has been passed to enable persons to pay a duty of 5 per cent. on the profits made by them, instead of a royalty.

Customs (Export Duties) (No. 12).—Until this year no export duties had been levied in this Colony, but in the Customs Duties Ordinance passed this year (No. 2, s. 19) an export duty of 2 cents a pound was imposed on balata (a substance somewhat similar to guttapercha, and now largely exported from the Colony). No provision is made in the Ordinance dealing with the collection of export duties, and the Ordinance now reported on makes the necessary provision for the collection of this duty and any other export duties which may hereafter be imposed.

Stills (No. 16).—This Ordinance prevents any person using a still of greater capacity than one quart for any purpose whatever without a licence, and makes the possession of a still without having a licence for it an offence punishable by a penalty not exceeding $500 or not more than six months' imprisonment.

The object of this somewhat drastic enactment is to render more difficult the illicit distilling of spirits, an offence very rife in some parts of the Colony.

Weights and Measures (Sale of Rice) (No. 17).—The cultivation of rice has of late years become an important industry in this Colony, but serious disputes have recently occurred between the rice-growers and the persons who buy the rice. The rice has not usually been sold by standard measures, but by some other measure, a kerosene oil tin (one made to hold four gallons of oil) being a favourite measure. Complaints have been made as to unfairness in the use of these measures, and as to their capacity being altered, and this Ordinance has been passed to prevent the sale of rice by any but standard weights and measures, and it makes illegal any agreement to sell rice by any other weight or measure. By an Ordinance passed in 1851 (No. 2 of 1851) the standard weights and measures for the Colony are the English Imperial standards.

Shop Assistants (Hours) (No. 23).—This Ordinance has been passed to regulate the hours of persons employed in shops. Under it no person may be employed before 6 a.m. nor after 4 p.m. except on Saturdays, when in certain shops he may be employed up to 9 p.m. Also every shop assistant is to be allowed a half-holiday from 1 p.m. on one day a week.

The one private Ordinance (No. 6) was passed to incorporate the Moravian Church in the Colony, and give it power to hold lands, and to sue and be sued, as has already been done in the case of several religious bodies at work in the Colony.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—36.[1]

Quarantine (No. 5).—The Quarantine Ordinance, 1910, amends and is consolidated with the principal Ordinance 1907, and extends the quarantine provisions of such Ordinance to persons who take on board their vessels persons or goods from a vessel in quarantine, and renders liable to quarantine the vessels receiving on board such persons or goods.

Highways (No. 8).—The Roads and Rivers Ordinance, 1910, constitutes the Colonial Secretary, the Surveyor-General, the Director of Public Works, and from five to seven persons nominated by the Governor, the Roads and Rivers Board with power (*inter alia*) to appropriate land for the making or the improvement of public roads without payment of compensation to persons entitled to such land, and for like purpose to remove rock or soil from land adjacent to the road without payment of compensation to the owners of such materials.

Labour (No. 9).—The Labour Ordinance, 1910, amends and is consolidated with like Ordinance No. 71 of Consolidated Laws as amended by Ordinances of 1887, 1888, 1894, 1899, 1900, and 1907, and these Ordinances and the present Ordinance are therein referred to as the "labour laws," which contain various statutory provisions regulating the relations between employer and employed in respect of contract of hire and service of labourers.

Fireworks (No. 14).—The Police and Petty Misdemeanours Ordinance (No. 36 Consolidated Laws) is extended by the present Ordinance to the wanton and unreasonable discharge of firearms or fireworks in streets, public places, or private enclosures within the towns and villages of the Colony.

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[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council.

Aliens (No. 17).—The Undesirable Aliens Expulsion Ordinance, 1910, enables the Governor to issue expulsion orders against persons convicted by any Court in the Colony of any felony or misdemeanour or other penal offence and by such Court recommended for expulsion, and against persons whose expulsion is certified as expedient for the preservation of peace and good order by a District Commissioner and at least one Justice of the Peace.

Sale of Goods (No. 18).—The Produce Protection Ordinance, 1910, makes it compulsory for all persons buying or selling coco-nuts, chicle, and rubber (except growers of the produce or their agents and persons buying for domestic use) to take out a licence under and subject to the provisions of the Ordinance.

Railways (No. 25).—The Government Railways Ordinance, 1910, empowers the Governor in Council to make regulations for the management and due and profitable working of the Government railways and for the safety and comfort of passengers or employees thereon.

Prisons (No. 26).—The Prisons Ordinance, 1910, amends and is consolidated with like Ordinance No. 77 Consolidated Laws, and empowers the Governor in Council, subject to approval of H.M. Secretary of State for the Colonies, to frame rules for prisons and maintenance therein of good order and discipline and for the imposition of personal punishments. The Governor is also empowered to order prisoners to be removed to any place in the interests of justice or for the purpose of public inquiry, such prisoners whilst so removed to be kept in legal custody.

Volunteer Forces (No. 28).—The Volunteer (Rules) Ordinance, 1910, amends and is consolidated with like Ordinance 1897. The Commanding Officer for the time being of the British Honduras Volunteer Force is empowered, with the consent of the Governor in Council, from time to time to make rules and regulations for (1) the management of the Volunteer Force; (2) the admission and qualification of members; (3) appointment and promotion of non-commissioned officers; (4) assembling the force; (5) discipline; (6) issue and protection of arms and military stores; (7) attendance at drills and parade and granting of leave; (8) efficiency and training of officers and volunteers; (9) enlistment, resignation, and discharge of volunteers; (10) shooting and ranges; (11) camps and camping grounds; and (12) other matters relating to the force.

Such rules may provide for trial and investigation of breaches thereof and the infliction of fines and penalties, but shall not come into operation until approved by the Governor in Council and published in the Regimental Orders of the Force and in the *Gazette*, and thereupon shall have the force of law.

Timber Measurement (No. 30).—The Measurers of Wood Ordinance, 1910, regulates the qualifications and duties of persons licensed to measure mahogany and cedar.

Consular Officers (No. 32).—The Consular Officers' Exemption from Duty Ordinance, 1910, exempts from payment of customs duties (*a*) all articles officially supplied for the use of his consulate to the Consular Officer of such foreign country as the Governor may name in a notification in the *Gazette*, and (*b*) such articles, goods, and effects imported on first arrival by the Consul-General or Consul-de-Carrière of such foreign country as the Governor may notify in the *Gazette.*

Attorney-General (No. 33).—The Attorney-General's (Right to Practise) Ordinance, 1910, enables the Attorney-General of the Colony *ex-officio* and without payment of any fee to practise in the Courts of the Colony in the same manner as a solicitor duly admitted, enrolled, and certified under the provisions of the Consolidated Laws No. 8.

Witnesses' Expenses (No. 34).—The Witnesses' Expenses Ordinance, 1910, enables the Court, on motion of the Attorney-General, to order payment to be made to witnesses in the Supreme Court in trials for felony or misdemeanour, and in the schedules are contained scales of allowances for witnesses in the Supreme Court in criminal cases, and for prosecution and witnesses before District Commissioners in cases of felony and misdemeanour.

Liquor Licences (No. 35).—The Liquor Licence Ordinance, 1910, amends and is consolidated with like Ordinance No. 98 of Consolidated Laws. The Ordinance supplements the regulations and requirements of the principal Ordinance as regards licensed premises, their hours of closing, and police restrictions, and generally as to matters of licensing and the forfeiture of licences, etc.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Laws passed—37.

Squatters.—S. 7. of 4 Geo. II. No. 4 (an Act of the Council and Assembly of Jamaica) is repealed by No. 5.

Goats.—A Law of 1867, which prohibits the keeping of swine in Kingston, is applied to goats (No. 7).

Marriage.—Law No. 8 legalises marriage with a deceased wife's sister.

Unseaworthy Ships.—The power to detain British ships found to be unseaworthy under the Marine Board Law, 1903, is extended by Law No. 15 to foreign ships being in any port of Jamaica.

Tobacco.—The excise duties on tobacco manufactured for local consumption, as fixed by a Law of 1900, are amended. The duty on cigars is reduced from 1*s.* per 100 to 3*d.*, if sold by retail at less than 5*s.* per 100, and to 6*d.* when sold at over 5*s.* and less than 10*s.* per 100. Beyond that the duty of 1*s.* is maintained. On the other hand, the duty on cigarettes is raised from 1*d.* to 1½*d.* per 100.

Bees.—Bees and bee-keepers' stock (including hives, honey, etc.) are not allowed to be imported save with the approval of the Director of Agriculture (No. 19). The grounds of the prohibition are not indicated.

Quinine.—The sale of quinine by an unlicensed person may be permitted by the Governor (No. 20).

Yaws.—Compulsory notification of this disease is provided by Law No. 23 to be made by the head of a family or schoolmaster.

Judicature.—By Law 42 of 1909 the Judge of the Kingston Court was put on the Supreme Court on occasions when a "full Court" was required; but now, by Law 25 of 1910, the Chief Justice or the Puisne Judge can sit alone if the Kingston Judge cannot attend.

Indian Immigrants.—Provisions are made by No. 31 to prevent the embarkation of Indian immigrants on their return if they are found to be insane.

Electric Lighting.—A notable interference with private liberty is made by No. 34, which prohibits any one from making any installation of electric wires, telephones, or electric bells unless he is duly licensed by the Director of Public Works. The Governor may make regulations as to licensing, as to "the examination to be passed by any candidate for such licence," etc. Let us be thankful that in this country we can have our electric light and bells without passing any examination.

The other Laws are of the character of Money or Private Acts.

6. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—25.[1]

Agriculture.—Education, etc. (No. 2).—The Board of Agriculture Ordinance, 1910, is consolidated with like Ordinances No. 35, 1908, and No. 16, 1909, and the powers of appropriation of funds in the Ordinance of 1908 are extended to purposes of agricultural education, improved methods of cultivation, exhibitions of stock and agricultural products.

Oil Mining (No. 3).—The Oil Mining Ordinance, 1910, after definitions of "crude oil" as natural produce of wells and springs before refining, and "products" as the constituents of such oil separated in a petroleum refinery including petroleum spirit and illuminating oils and oil fuel, gives to his

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[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council

Majesty's Government right of pre-emption of crude oil and products at a price, failing agreement, to be determined by arbitration, with power for the Government, after notice of intention to purchase, to prohibit for twelve months exportation of crude oil and products unless and until option of purchase be given to the Government and within seven days after refused.

In all leases and conveyances of prospecting, boring, or mining rights there shall be implied a condition for actively carrying on mining operations, and in default for the forfeiture of the lease or grant.

Regulations for the purposes of the Ordinance are to be made by the Governor in Council.

Census (No. 5).—The Ordinance for the census of 1911 enables the Governor to make all necessary regulations, and fixes the night of Sunday, April 2, 1911, as the census period for enumeration of the resident population.

Agricultural Fires (No. 6).—The Agricultural Fires Ordinance, 1909 (passed March 31, 1910), enables the Governor, by proclamation from time to time, to prohibit setting fire to any crop or trash growing or being upon any land without a licence from the warden of the ward within which such land is situated, and subject to the provisions therein contained.

Ordnance Lands (No. 8).—The Tobago Ordnance Lands Ordinance, 1910, repeals like Acts of 1854 and 1856, and vests the lands and buildings specified therein in the Crown for military or naval purposes.

Juries (No. 12).—The Jury Ordinance, 1910, amends like Ordinance No. 33 by a proviso that upon trials for offences other than murder, treason, or misprision of treason, the Court may at discretion discharge the jury before they consider their verdict.

Shop Assistants (No. 13).—The Shop Assistants (Hours) Ordinance, 1910, fixes the working hours of retail selling clerks from 7 a.m. to 4 p.m. on week-days, except on Saturdays, when the hours are from 7 a.m. until 1 p.m.

Petroleum (No. 15).—The Petroleum (Pipe Lines) Ordinance, 1910, regulates as between owners and occupiers of lands the laying down across their lands of pipes for the conveyance of oil.

Sale of Goods (No. 16).—The Sale of Produce Ordinance, 1910, is consolidated with like Ordinance, 1909, and amends the same in respect of the sale of coconuts.

Quarantine (No. 17).—The Quarantine Ordinance, 1910, adopts the West Indian Intercolonial Sanitary Convention, 1904, with the recommendation contained in the reports dated June 12, 1907, July 1, 1908, and September 26, 1910, set out in the first schedule, and the Quarantine Regulations set out in the second schedule, and gives powers to the Governor to appoint a Quarantine Authority, a Port Health, Visiting, and such other officers as may be necessary for the purpose of carrying out the provisions of the Ordinance in respect of ships on arrival in port and the measures to be adopted in cases of infected, suspected, or healthy ships.

Agriculture (No. 19).—This Ordinance levies for the year 1911 the following export taxes and appropriates the revenue therefrom in aid of agriculture: Cocoa, 1*d.* per 100 lb.; sugar, 1½*d.* per 1,000 lb.; coconuts, 3*d.* per 1,000 nuts; copra; 8*d.* per 1,000 lb., and on lesser quantities in proportion.

Sunday Closing (No. 20).—The Sunday Closing Ordinance, 1910, is consolidated with like Ordinance, 1909, which it amends in respect of exemptions for the sale of certain produce by extending same to exempt provisions, stores, coals, or other supplies for vessels anchored in the port.

Public Officers' Guarantees (No. 22).—The Public Officers' Guarantee Fund Ordinance, 1910, is consolidated with the principal Ordinance, 1906, which it amends in respect of the definition of the term "officer," amount of contributions, adjustment of contributions on promotion, and their payment during absence on leave, and in respect of the provisions coming into force when the funds to income account are not sufficient to pay the claims on the fund, and of the conditions as to refunding money to officers and the transfer of unclaimed funds.

Attachment of Debts (No. 24).—The Attachment of Debts Ordinance, 1910, repeals like Ordinance No. 24, 1909, and exempts from orders for attachment by any Court in the Colony the wages of any servant, labourer, or workman, and the money payable to any contractor or other person in respect of Government work unless all wages of labourers employed have been satisfied.

7. THE WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* SIR CHARLES TARRING, *late Chief Justice of Grenada.*]

Ordinances passed—19.

Liquor Licences (No. 8).—This is the most elaborate Ordinance of the year. It imposes an annual licence on the sale of liquor, except in the cases of medicated or methylated spirits sold as medicine by medical men or chemists and druggists, registered hotels (unless selling to others than lodgers, boarders, or *bona fide* travellers) and clubs, and vessels calling in the Colony. The licences are issued by the Treasurer on the certificates of a Licensing Board in each district, consisting of the police magistrate of the district and three other persons annually appointed by the Governor in Council, the magistrate being chairman and one of the quorum of three. Licensing sessions are to be held quarterly. Distinct procedures are defined for the renewal of existing licences and granting new ones. The Board has an absolute discretion, with an appeal to the Chief Justice. The applicant must satisfy the Board that he is of good character, is not disqualified, that the licence is not undesirable to the locality, and that the premises are suitable. Sunday licences are grantable with the sanction of the Governor in Council to licensed restaurants for sale on Sundays, Christmas Day, Good Friday, and public fast-days. Occasional licences may be issued by the Treasurer. All licences are terminable on December 31, except Sunday licences, which come to an end on June 30 and December 31. Provision for removal to new premises and transfer to new persons of licences is made, with power to the Treasurer to deal with urgent cases before and until next licensing sessions. The personal representative of a licensed dealer may continue the sale on certain conditions till the next available licensing session. Monthly lists of licences issued, cancelled, or forfeited are to be issued by the Treasurer. No sale is to take place between Saturday 9 p.m. and Monday 6 a.m., or between 9 p.m. on Christmas Eve to 6 a.m. of the week-day next following Christmas Day (except in the case of Sunday licences), or between 8 p.m. on all other days of the week to 6 a.m. next morning. Sales under Sunday licences may be from 9 a.m. to 11 a.m., and from 1.30 p.m. to 4.30 p.m. These hours may be varied by the Governor in Council, who may order temporary closing in case of riot or tumult arising or apprehended. Stock-books have to be kept for inspection, and permits obtained for the supply of spirits by one licensee to another. Revenue officers have power to search licensed premises. Licensed dealers permitting drunkenness or resort of prostitutes, harbouring constables, suffering gambling, or selling to persons under sixteen for consumption on the premises are guilty of offences against the Ordinance. A schedule of duties is attached.

Firearms.—Ordinance No. 2 enacts registration of all guns except those kept by gunsmiths for trade, and half-yearly licences in three classes; licences being not transferable, except to an executor, administrator, or assignee in bankruptcy of the original licensee. Gunsmiths are to be licensed, and to keep for inspection prescribed receipt and delivery books. Persons in the military, naval, or volunteer services of His Majesty, or in the police force or revenue services of the Colony, are exempt when on duty or at target practice, as also members of recognised rifle clubs in the same predicament, and watchmen under the authority of an employer holding an estate's gun licence on giving his own and his employer's names; licensed gunsmiths; and persons carrying guns of and for licensed persons. Revenue and police or other Government officers authorised by the Governor may enter on lands to demand licence or make arrest, and on authorisation of Treasurer or Chief of Police may make searches. The Governor in Council may by Proclamation prohibit the carrying or sale of firearms in the Colony, or order their delivery up.

Butchers by Ordinance 4 have to take out a half-yearly licence, and to enter in books particulars of purchase of animals, description of same, and date of killing. Hides are to be kept five days in sanitary condition and place within precincts of residence. Books and hides are to be produced to any Justice of the Peace or constable, or person alleging loss of animal.

Public Health.—Two Ordinances deal with this subject. No. 5 is to provide against the spread of a disease with the mysterious name of ankylostomiasis; and besides enacting compulsory treatment and detention of infected persons prohibits defæcation on estates elsewhere than at the places provided, ordains the provision of public latrines in towns and villages, and proper accommodation in Government and grant-in-aid schools. No. 18 prohibits the employment in bakehouses of persons suffering from certain diseases, or of any one without a medical certificate of freedom from such diseases, ordains the provision of proper sanitary accommodation, and specifies the sleeping arrangements that may be made therein. Bakehouses must be registered annually, and be limewashed or painted inside periodically. Slaughter-houses are placed, subject to the Governor in Council, under the regulation of the local authorities as to use, conduct, management, and cleanliness; as are also aerated water factories for supplying a proper water supply and filtration thereof, the cleanliness of machinery and bottles, and the protection of all drinks from contamination.

Pensions and gratuities to prison officials are regulated by Ordinance No. 7.

Prevention of Cruelty to animals and birds is aimed at by Ordinance No. 10, which besides forbidding the ordinary acts of cruelty, prohibits the torture or causing unnecessary suffering to animal or bird required to be killed for food.

Amendments of a slight character are made by Nos. 6, 11, 12, 13, 15, and 17 respectively to the Ordinances as to Medical and Dentists' Registration, the Supreme Court, Licences, Public Lands Acquisition, the Criminal Code, and Government Savings Banks (limiting deposits to £200, or in the case of friendly and other societies £500).

Additional Import Duties are imposed by Ordinances Nos. 1 and 9; and there are two **Appropriation** Ordinances, Nos. 3 and 14.

A New Road from the harbour is authorised by Ordinance 19.

(ii) ST. LUCIA.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—11.[1]

Shipping (No. 3).—The Shipping Ordinance, 1910, amends and is consolidated with a like Ordinance of 1888, the provisions of which, as to detention of ships unsafe by reason of defects in hull, equipments, or machinery, or of overloading or improper loading, are extended to foreign ships in the ports of the Colony.

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[1] Ordinances are passed by the Governor with the advice and consent ot the Legislative Council of St. Lucia, and are numbered consecutively for the calendar year.

Medical Registration (No. 5).—The Medical Registration Ordinance, 1910, amends and is consolidated with a like Ordinance of 1904. The Ordinance requires, under a penalty of not exceeding £100, that all persons practising medicine or surgery, or prescribing medical or surgical treatment, are to be registered under this Ordinance, or are to be persons employed as physicians or surgeons in H.M.'s naval or military service. It empowers the Governor to appoint a Government Dispenser to act under control of a medical officer in relation to the hospitals or other medical institutions of the Colony.

Port Charges (No. 6).—The Port Charges Ordinance, 1910, amends like Ordinance, 1903, the provisions of which as to exemptions from fees, charges, or dues are extended by this Ordinance to ships engaged solely in the service of the Government of a foreign State.

Income Tax (No. 9).—The Income Tax Ordinance, 1910, imposes a graduated income tax on persons residing in the Colony at the following rates in the pound:

Incomes	from	£30	to	£90	at the	rate of	1½*d.*
,,	,,	90	,,	120	,,	,,	2*d.*
,,	,,	120	,,	180	,,	,,	3*d.*
,,	,,	180	,,	400	,,	,,	4*d.*
,,	above	400			,,	,,	5*d.*

The incomes in respect of which the tax is imposed include income accruing to residents in the Colony, and derived from the annual profits of any kind of property, whether situate in the Colony or elsewhere, or from any profession, trade, employment, or vocation, whether carried on in the Colony or elsewhere, or from stipends incident to public offices, or from pensions payable out of the public revenue of the Colony. Persons not resident in the Colony are exempted from the tax in respect of pensions granted before the date of the Ordinance.

Deductions are allowed within certain limits for life insurance premiums, but not for sums employed as capital, or in disbursements for other than expenses solely incident to the acquisition of the taxable income, or for any gratuitous allowance to other persons, who, however, may deduct such allowance from their taxable incomes; or from profits by residents in the Colony on exports from, or sales out of the Colony, whether received in the Colony or not.

Exemptions from the income tax are allowed in respect of

offertories or quêtes;

incomes from real or personal property under the control of trustees of the Anglican Church, the vestries of the Roman Catholic Church, and of any corporation or trustee of the Wesleyan Methodist Church;

incomes of friendly societies;

administrative allowances to public officers;

incomes of the Colony's volunteer corps, municipal bodies, town boards, or water authority;

incomes of the Baron Trust, the Agricultural Society, and schools receiving grants out of revenue of the Colony, and free libraries;

incomes of the police force paid out of revenue, other than those of the chief of the police, the sergeant-major, and the staff-sergeant;

incomes of non-resident persons payable out of the Government Stock of the Colony, or derived from interest on loans to residents in the Colony;

incomes of telegraph or chartered banking or insurance companies;

incomes of shipping companies whose head office is outside Colony arising from carriage of passengers, mails, or freight or subsidies paid by the Colony; and

incomes under £30.

The tax is to be due and payable on or before July 31 in respect of each year ending December 31 next ensuing.

General provisions for enforcing payment, the assessment of incomes, and other matters of administration are contained in the Ordinance, which is to commence in respect of the half-year ending December 31, 1910.

The Road Tax Ordinance, 1905, under which incomes became taxable, is repealed, with some savings as regards periods overlapping period of the commencement of the Ordinance.

Census (No. 10).—The Census Ordinance, 1910, fixes the first Sunday in April 1911 as the day for the census, and makes all necessary provisions for taking the census.

(iii) ST. VINCENT.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—13.[1]

Petroleum (No. 1).—The Explosives and Petroleum Ordinance, 1910, defines "explosive" to mean gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance used or manufactured for the purpose of explosion or pyrotechnic effect; and "petroleum" to include rock oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum or above-named oils. The permission in writing of the Governor must be obtained for the importation, manufacture, sale, conveyance, and possession of the above-named explosives and petroleum. The special permits and licences of the Treasurer must be obtained before dangerous petroleum is landed and stored for use, and its storage for sale is restricted to a Government Petroleum Store. The Ordinance contains detailed provisions for storing and testing "explosives" and "petroleum," making regulations, and enforcing the Ordinance.

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[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council of St. Vincent.

Telephones (No. 2).—The Telephone Ordinance, 1910, vests in the Governor the sole right of establishing and working telephones in the Colony, and of using the public roads for the purpose.

Quarantine (No. 4).—The Quarantine Ordinance, 1910, amends and is consolidated with like Ordinances 1905 and 1909. It enables the Governor to determine and notify the health officers whether any colony or country not a party to the Quarantine Regulations is an infected place within the meaning of those Regulations, and when such notification shall cease to operate by reason of the place having been free of any cases for twenty-one days.

Cruelty to Animals (No. 5).—The Cruelty to Animals Ordinance, 1910, takes cognisance of all acts of cruelty to animals, and provides penalties and imprisonment on conviction before magistrates or justices of persons guilty of offences against the Ordinance.

Census (No. 8).—The Census Ordinance, 1910, fixes the first Sunday in April 1911 as the census day, and enables the Governor to make all necessary provisions for the census enumeration.

Public Health (No. 9).—The Public Health Ordinance, 1910, repeals the previous Public Health Ordinance of 1901. It deals generally with matters affecting the public health, and its provisions run to seventy-five sections, with a schedule of forms of notices, summonses, orders for abatement and prohibition of nuisances.

Bank Holidays (No. 12).—The Bank Holidays Ordinance, 1910, amends and is consolidated with like Ordinance 1900. It empowers the Governor in Council, by proclamation in the *Gazette*, to appoint any special day as a Bank Holiday, and the schedule contains the following list of Bank Holidays to be observed: The birthday of the reigning sovereign, January 1 and 2, Easter Monday, Whit Monday, "Victoria Day" on May 24, Corpus Christi, first Monday in August, December 26, and if any of the above days fall on a Sunday, the Monday following it to be the Bank Holiday.

8. THE LEEWARD ISLANDS.

[*Contributed by* Sir Charles Tarring, *late Chief Justice of Grenada.*]

THE FEDERAL COLONY.

Acts passed—9.

Six are amending Acts, two are Appropriation Acts, and one is a repealing Act.

Quarantine (Convention) Act, 1905.—No. 1 enacts two slight verbal amendments to, and replaces the exception of plague in the original Act.

Marriages.—No. 2 legalises marriages by any minister of the Christian religion in the Colony between 6 a.m. and 4 p.m., apparently re-enacting No. 2 of 1909.

Offences against the Person.—No. 3 forbids sentence of death being pronounced against any person under the age of fifteen, and substitutes detention during H.M.'s pleasure when and under any conditions the Governor may direct.

Magistrates: Code of Procedure.—No. 4 introduces an amendment and a proviso into the original Act of 1891, and repeals ss. 132 and 133 thereof.

Jury Laws.—No. 5 permits jurors in cases of felony, not capital, to leave Court at adjournments from day to day, and imposes on them an oath of non-communication with outsiders during such adjournments. It adds a proviso to the original Act of 1878 against summoning to the same sittings more than one person from the same place of business or the same estate.

Supreme Court Library.—No. 6 repeals Act No. 10 of 1878, establishing this Library, and apparently re-enacting No. 6 of 1909.

Supreme Court.—No. 7 imposes a fee of £20 on barristers or solicitors desiring to practise, as well as the deposit of certificate of call or admission and the filing of an affidavit of identity, apparently re-enacting No. 7 of 1909.

(i) ANTIGUA.

Ordinances passed—15.

Six are amending Ordinances, two are Appropriation Ordinances.

Savings Bank.—No. 2 provides for the investment of Savings Bank funds.

St. John's City Commissioners.—No. 4 validates certain proceedings of this body.

Public Works and Roads.—No. 5 authorises the removal of unnecessary public roads from the list of such, or the restoration thereto of roads so removed if again needed.

Wallings Reservoir Protection.—No. 6 provides that the Colonial Engineer shall be in charge pending election of Board.

Constitution.—No. 7 establishes a new Legislative Council.

Medical and Poor Relief.—No. 8 amends the law as to the object and mode of user of the hospital.

Public Notices.—No. 9 defines and prescribes the method of publishing these.

Cattle Trespass.—No. 10 provides a remedy for this nuisance.

White Phosphorus Matches.—No. 11 prohibits the use, sale, and importation of these.

Antigua Law Library, The, is established, and its management provided for by No. 12.

Income, Trade and Professions Tax, 1900, is amended by No. 13.

Closure of Cemeteries is authorised by No. 14 where necessary for the protection of the public health.

(ii) DOMINICA.

Ordinances passed—7.

Two are Appropriation Ordinances and one an amending Ordinance.

Marriages.—No. 2 is an important Ordinance on this subject in nine parts. Part I. defines terms. Part II. appoints Registrars and Registrar-Generals, marriage districts, marriage officers (including any male minister of the Christian religion duly ordained or set apart), and provides for registration of buildings. Part III. sets forth certain restrictions on marriage by reason of blood relationship or relationship by affinity, with a proviso permitting marriage with a deceased wife's sister. Part IV. deals with the preliminaries to marriage—banns, licences, registrar's certificate, etc. Part V. provides for the solemnisation or celebration of marriage, which may be between 6 a.m. and 8 p.m. by a marriage officer other than the Registrar-General or a Registrar, and between 10 a.m. and 4 p.m. if by any of these officials. Part VI. provides for the registration of marriages. Part VII. permits marriages *in articulo mortis* to be solemnised by any minister of religion being a duly appointed marriage officer without licence or certificate of notice or banns under certain conditions. Part VIII. creates offences, and Part IX. adds miscellaneous provisions.

Dominica Forests, Limited.—No. 3 exempts from import duty and wharfage dues certain material imported by this Company.

Dominica Forests, Limited, Acquisition of Lands by.—No. 4 gives the Company the necessary powers for the purposes of its undertaking.

Savings Bank.—No. 6 appoints and provides for the payment of officers.

White Phosphorus Matches.—No. 7 prohibits the manufacture, sale, and importation of these.

(iii) MONTSERRAT.

Ordinances passed—7.

Two are Appropriation Ordinances, and four amending Ordinances.

White Phosphorus Matches.—No. 2 prohibits the manufacture, sale, and importation of these.

Carriage of Passengers by Sea.—No. 3 empowers the detention of British ships registered in the Colony for survey, and alteration if necessary to render seaworthy.

Newspaper Surety.—No. 4 defines "newspaper."

Export Duty.—No. 5 substitutes a new schedule for that contained in the Export Duty Ordinance of 1907.

Burial Ground.—No. 6 confines burials to burial grounds appointed by the Governor in Council.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—5.

Two are Appropriation Ordinances and one an amending Ordinance.

White Phosphorus Matches.—No. 2 prohibits the manufacture, sale, and importation of these.

Carriage of Passengers by Sea.—No. 3 gives leave to detain British ships registered in the Colony if deemed unsafe for survey or until made seaworthy.

Public Cemeteries.—No. 5 repeals the old law and makes new enactments as to the care and management of these institutions.

(v) THE VIRGIN ISLANDS.

Ordinances passed—3.

Two are Appropriation Ordinances.

White Phosphorus Matches.—No. 2 prohibits the manufacture, sale, and importation of these.

XI. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—3.

Matches.—The manufacture, importation, or sale of matches made with white phosphorus is prohibited (No. 2).

The other two Ordinances do not call for remark.

2. MALTA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—14.

Shipping Casualties.—Considerable amendments are made in the Ordinance of 1874 which is the existing law on this subject. They bring the law of Malta into line with that of the United Kingdom, and a set of Regulations for inquiries is appended (No. 2).

Offensive Weapons.—This Ordinance (No. 4), which seeks to restrain the use of what the Italian version calls "armi proprie," will be of interest to those who call for similar legislation in this country. No one may deal in offensive weapons without a licence, and the seller must, before delivery, give notice to the nearest police officer, with name, address, etc., of the purchaser. No weapon is to be sold to a person under eighteen, or to any convicted thief or any known vagrant. Such weapons are not to be worn out of doors. Knives with pointed blades must not be carried without a licence from the police (pen-knives and trade knives excepted).

Preservation of Antiquities.—The Protection of Antiquities Ordinance (No. 6) applies to "monuments or other immovable or movable objects having a local antiquarian or archæological importance." On sale of any such, Government to have a right of pre-emption on parity of conditions. Exportation of such things is allowed only with the sanction of the Governor, and on payment of an export duty of 20 per cent. The Government may also carry out excavations on private ground, supervise the excavations of owners, and obtain possession of lands containing archæological remains by expropriation.

Census.—An Ordinance providing for taking the census of 1911 (No. 7) gives ample powers to the Registrar. The details of the schedules are to be fixed by the Registrar, with the approval of the Governor.

Police Laws.—An amending law (No. 11) contains some new provisions of interest. Spitting in churches, law courts, or other public buildings, or in shops or markets, is forbidden under penalty of fine. The keeping of any "bovines," or any pig, goat, horse, dog, or fowl in any common lodging house is absolutely forbidden, while within the urban limits of Valetta and other specified places not more than six rabbits, fowls, geese, turkeys, or pigeons in any house, and the sanitary authority can prohibit the keeping of any of these animals if they consider it prejudicial to health. No spirituous liquors are to be sold to a drunken person, or to one of apparently unsound or weak mind, and liquor is not to be supplied to any police constable in uniform.

Weights and Measures.—Malta adopts the metric system, and standard metres, kilograms, and litres are to be kept. Maltese and Imperial measures, which are apparently used concurrently, are thus to be superseded. Full tables of the equivalents of the three systems of weights and measures are given in the schedule.

Dogs.—A new Ordinance (No. 13) replaces No. 18 of 1888 as to the keeping of dogs. It follows the law of this country as to licences, except that puppies are required to be licensed when weaned, the onus of proving that a puppy is unweaned resting upon the owner. Dogs must wear metal badges marked with a number and year of issue: these must be renewed annually.

3. CYPRUS.

This Legislation will appear next year.

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NOTES.

Comparative Law in Blue-Books.

Imperial Conference.—The volume of papers laid before the Imperial Conference and published as a Blue Book (Cd. 5746 I.; 3*s.* 1*d.*) contains several important statements showing the differences in the law upon various subjects, and the steps which are being taken to secure greater uniformity.

The enforcement of commercial arbitration awards is a subject of practical importance to the commercial community upon which representations have been made to the Government. It is difficult and often impossible to secure the enforcement abroad of awards given in arbitration on commercial matters in the United Kingdom between British and foreign traders, where such awards are in favour of the former. Information as to the existing legislation and practice in the dominions and foreign countries has been obtained in response to inquiries containing the two following questions:

(1) Is an agreement in writing to refer to arbitration in the United Kingdom disputes arising out of commercial contracts valid and enforceable?

(2) Can an award in an arbitration held in the United Kingdom be enforced, and if so, by what means, (*a*) where such an award is given in the United Kingdom, and (*b*) where, pursuant to the terms of the agreement of reference to arbitration, the award can be delivered in the place of domicile of each of the parties thereto?

The statements sent in reply, of which the substance is published, show that there is considerable diversity both in the legislation and practice.

Another matter in which uniformity is desired is the granting and protection of trade marks and patents. The subject was discussed at the Conference of Colonial Premiers in 1902, and again at the Imperial Conference of 1907, when the Imperial Government was asked to endeavour to obtain further uniformity. Some progress has been made in that direction, as, for example, by the Australian Patents Act, which closely resembles that for the United Kingdom. The memorandum contains, besides the particulars of the laws of patents and trade marks in the self-governing dominions, an account of the International Convention for the protection of industrial property and the provisions which have been inserted in some of the colonial Patent Laws, giving privileges to foreign patentees or providing for the contingency of the colonies in which they are in force joining the Union.

The important analysis of the company laws of the United Kingdom, India, Canada, Australia, New Zealand, and South Africa has been issued as a separate publication (Cd. 5864; 4½*d.*). It brings up to date the analysis framed in 1907, and shows what changes have taken place in the law. From the prefatory memorandum of the Board of Trade may be quoted a description of them:

> Since the Conference of 1907, the Acts of the United Kingdom relating to companies, which then amounted to seventeen in number, were, together with two other amending Acts passed in 1907 and 1908, making nineteen in all, consolidated into a single statute in the year 1908.
>
> In India there has been no change, and with the exception of two very short Acts of 1895 and 1900, the object of the former being to give a company power to alter its memorandum of association with the sanction of the High Court, and of the latter to give a company power to establish branch registers, the law governing joint stock companies in India has remained without revision for upwards of twenty-eight years.
>
> In Canada the Dominion Acts relating to companies are not founded on the Imperial law, and the legislation of the provinces relating to companies is in some cases based on the Dominion Acts and in other cases on the Imperial Acts, and in most cases is a combination of the Dominion and Imperial law.
>
> In Canada there were in 1907 nine different systems of company law contained in seventy-six Acts and Ordinances. There are now eleven different systems of company law contained in sixty-seven Acts and Ordinances. The increase in the number of systems of law in Canada is due to the legislation of the new provinces of Alberta and Saskatchewan, the former province having contributed three new statutes and the latter five dealing with the law of companies. In British Columbia the thirteen statutes which were in existence in 1907 have been repealed and have been replaced by a single consolidating statute based entirely on and closely following the words of the Imperial Consolidation Act. In the Province of Ontario also there has been a reduction from sixteen to five, owing to a consolidation which took place in 1907. The Ontario Act of 1907, however, is founded on the statutes of the Dominion Parliament dealing with the law of companies, and with the exception of a few provisions do not follow the Imperial Consolidation Act at all.
>
> In Australia the only change of any importance is the consolidation of the laws relating to companies in the State of Victoria. The total number of statutes in Australia dealing with the law of companies was forty-six in 1907, and by the end of 1910 had risen to fifty-four. In New South Wales the increase was from four to five; in Victoria nine to twelve; in Queensland eleven to twelve; and in Tasmania thirteen to sixteen; but by the Victorian Consolidation Act (which only came into operation on January 31, 1911) the twelve Victorian statutes have now been reduced to one, and the total for Australia is now forty-three as against forty-six in 1907.
>
> In 1910 a Select Committee of the Legislative Assembly of Victoria was appointed to consider and report upon the question of the consolidation and amendment of the law relating to trading companies. The Committee held sixteen sittings, and examined a number of witnesses, including representatives of the Law Institute of Victoria, the Associated Banks, the Melbourne Stock Exchange, and the Chamber of Mines, and received a report from the Chamber of Commerce. In this report the Chamber of Commerce said as follows:
>
> > "We strongly approve of the desire which has been manifested to assimilate our law to the English Companies Act, 1908, and consider that, except in certain

matters referred to later, the more nearly our law is made to resemble the English Act the greater will be the advantage, as the legal profession and the Courts will then have the advantage of the English text-books and decisions explaining and interpreting the law. This, in our opinion, will make for certainty, and we deprecate anything in the nature of trifling deviations from the English Act that will tend to have an opposite effect."

The Select Committee of the Legislative Assembly ultimately reported that they were unanimous in opinion that the effect of the Bill which was then before them would be to secure greater uniformity with the English company law, and the Bill, as stated above, has become law.

The Victorian Consolidation Act is an event of considerable importance, for though in form it is a Consolidation Act, it practically adopts the whole of the English law on the subject of companies.

In New Zealand also there has been practically no change, though the two statutes existing in 1907 have been repealed, and are represented by an Act of 1908, which in its turn has been amended by an Act of 1910.

In South Africa there were in 1907 twenty-two statutes in all dealing with company law, and there are now sixteen only. This reduction is entirely due to the Transvaal, which has led the way by remodelling her laws relating to companies by the adoption of the Imperial Consolidation Act practically without change.

In an appendix is set out in tabular form the number of statutes existing in 1907 and in 1911 with regard to companies in the United Kingdom, in India, and in the Dominions.

To sum up, some progress has been made towards uniformity during the past four years, notably by the Acts recently passed in the Transvaal, in Victoria, and in British Columbia, and there is every reason to hope that progress will be more rapid in the near future. The importance of the subject is realised on every hand, and resolutions are to be proposed with regard to it at the coming Conference by the representatives of both Australia and New Zealand.

The Conference of 1907 considered the draft of a Bill for consolidating and amending the enactments relating to naturalisation, British nationality, and the status of aliens. A departmental committee was appointed to consider what amendments might be made in order to meet the criticisms offered on some of its provisions at the Conference. They are discussed in the report of the committee, which is printed in full, together with an amended draft of the Bill.

A memorandum by the Home Office deals with uniformity in the law of accident compensation, and shows that the main principles of the English law have been adopted in several of the dominions.

The correspondence respecting the position of British Indians in the Dominions contains some consideration and explanation of the provisions of the immigration laws.

The Blue Book also contains valuable information upon other important subjects, such as the Declaration of London, but the present notes of its contents are confined to those matters which may be considered included under the title Comparative Legislation.

Sidelights on Constitutional History.—Dr. Baty sends us the following suggestive note:

"A perusal of M. Edith Durham's recent work, *In High Albania*, leads to the belief that much very valuable material for the study of jurisprudence could be obtained by observation of the usages of semi-civilised and uncivilised communities. The customs of the negroes of West Africa have been set down at length in various works devoted to that object. Miss Durham's purpose was not to describe legal institutions; but she could not give an account of the conditions obtaining in the wild district which she visited without touching to some extent upon juristic conceptions; and the information she gives casts interesting light upon obscure features of our own early history.

"Nothing is more difficult to elucidate than the history of the jury. And, though its most knotty problem is to discover how the jury of witnesses became a jury of judges, there are minor problems which cover the subject with a veil of mystery. For instance, how was it possible for the institution of *compurgators* ever to exist? How could it ever be reasonable that a defendant should escape payment of his debt on bringing a dozen of his friends and neighbours to swear that they believed that he did not owe it? Possible or not, we see it accepted to this day in Albania.

"'A man accuses another, say of theft. He lays the case before the *Bariaktar* (chieftain). The point to be determined is whether a sufficient number of con-jurors can be found before whom the accused may swear his innocence, and who are willing to swear to it with him. The *Bariaktar* can decide how many to summon. The plaintiff has the right to nominate them. They must belong to the tribe. The accused can object to a certain number . . . and have them replaced. All meet before the Council [of the *Bariaktar* and nine elders]. The accused and plaintiff are heard. Should the con-jurors agree that the accused is innocent, the elders acquit him. (*It must be remembered that in these tribes every one knows all about every one else's doings.*) Should all con-jurors but one agree to his innocence, that one can be dismissed, but two must replace him.

"'The plaintiff, if not satisfied, has the right to demand more con-jurors up to a fixed number according to the crime. Twenty-four may be demanded for murder, and from two to ten for stealing, according to the value of the thing stolen—eight for a horse. If it cannot be otherwise decided, the defendant may put in witnesses from among his own family. . . .

"'If the accused be found innocent, the whole party goes into the church. The candles are lighted on the altar, and, in the presence of the priest, the accused first swears his innocence on the gospel. Next in order swear those of his family who may have been summoned, then all the other con-jurors.'

"Here are the compurgators as we knew them in the West before the

Lateran Council. That council does not seem to have affected Albanian Catholicism.

"We also see in full force the system of accepting money payment as a penalty for homicide. It is strange to reflect that this apotheosis of private law still survives in Europe to-day. But Albania, though painted the colour of Turkey on the maps, is really a congeries of almost independent tribes, hardly subject to Turkey even in name. If one fellow-tribesman kills another, there is no question of a money equivalent. It is in the absolute discretion of the chieftain what penalty to impose. And if it is a stranger to the tribe who is killed, the case is practically an international one. The tribe as a whole is responsible, and a money indemnity is only what we are accustomed to as between civilised States in such cases. After all, the money indemnity is not much resorted to. In a case of misadventure or manslaughter, the £24 which is the standard may well be accepted. But where ill-feeling is raised—in a case of 'honour or vital interests'—the tender of cash is repudiated, and the tribes enter on a long blood feud. The nearest of kin of the deceased takes vengeance in kind, and retaliation is thought proper. This, one would think, would extend *ad infinitum*, or until the parties are killed off or exhausted. But there is a limit in the matter; undefined, but perhaps depending largely upon the merits of the original dispute. A and X quarrel: X insults A grossly, and A shoots X. It is not improper for X's brother Y to shoot A; and thereupon for A's relative B to retaliate on Y's infant son. The feud will endure for some time, but the point is that it will not go on indefinitely. The Kastrati and Hoti tribes being at feud, a Kastratiote accompanied Miss Durham as guide to the enemy's country. 'All drank healths with him, he was the honoured guest, and they discussed pleasantly how many "bloods" would be required before peace could be made. The house-master was quite frank; five was the number he thought necessary. And the Kastrati thought that five would satisfy them too.'

"Formerly, the blood-revenge would be taken in fair fight. Now, the avenger 'pots' his adversary from a sporting range with a rifle. 'This is the effect of civilisation,' was the comment of one *laudator temporis acti* to Miss Durham. You can kill an infant of the wrong-doer's kin, but you must not kill any one in the company of a child or a stranger. And it is possible to swear a temporary, or even a prolonged '*pax*'—as schoolboys used to call it—or *beza* in Albanian. This *beza* is inviolably observed. Nothing is more curious than the absolute reverence of these untamed mountaineers for law. Where Austin would have found his law-giver—surely not at the Yildiz Kiosk in Constantinople?—is not to be conjectured: yet the laws laid down hundreds of years ago by Lek Dukashin are religiously followed to the minutest detail. The blood-avenger must have his house burned, and burned it is, though it is morally impossible for him to decline to clear his honour by exacting the blood penalty. 'It is better that a village should fall than a custom' is a proverb of the country which gives the key to the popular feeling. In the same way, the aspirations of the people towards order and prosperity turn, quite rightly, though quite unconsciously, on the evolution of a law-abiding sentiment. They cannot realise that an honourable quietude could be procured by force, as Burma, India, Malaya, Colorado, have been pacified. Thus they anticipated incredible results from the new Turkish Constitution. Miss Durham, in the rôle of Austinian-bred Anglican, put before them the gospel of force:

"'But you say you want a good Government, and law and order. How can order be kept without *zaptiehs* [police] or a prison?'

"Answer: '*By the Constitution.*'

"And, really, that is the last word of political wisdom! If the 'Constitution' cannot create a universal sentiment, it is useless, and will not long be able to create constabulary.

"Before closing this paper, we will revert for a moment to the history of the jury, and invite the reader to accompany us much farther than Albania, namely to Labuan.

"When the startling Order-in-Council was promulgated which, purporting to proceed under an innocent Act (the Colonial Boundaries Act, 1895), allowing the Crown to adjust colonial boundaries, calmly abolished the Colony of Labuan by enacting that it should be comprised within the boundaries of the Straits Settlements, Labuan found itself under the supreme criminal jurisdiction of Singapore. In order to provide against the necessity of removing serious cases thither for trial, 'assizes' were empowered to be held by the Supreme Court of Singapore at Labuan. But there were not enough Europeans at Labuan to provide a jury panel. Consequently, the provision is made (Straits Enactments, 1909, No. 6) that trials should proceed with two officers who are termed 'assessors.' The curious point about them is, that they exhibit a reversion to the type of the ancient 'witness-jury.' If any of them knows anything about the case he is to be sworn and cross-examined as a witness, and then resume his seat on the Bench—a preposterous thing for a judge or assessor, but a perfectly intelligible thing in the mediæval conception of a juryman. It is remarkable that the old idea of a judge who knows the facts of his own knowledge, and is witness and judge combined, as was the ancient member of the *jureta* or *assisa*, should crop up again in a modern British colonial statute."

An Ideal Law Library.—Prof. Harrison Moore, who has been visiting the United States, writes:

"The English lawyer in New York will probably be invited to visit the house of the Bar Association of New York, and if he makes use of his opportunity he will find a good many things to surprise him. First of all, there is the house itself, the place where the profession is at home, its local habitation. There are suites of apartments, beautiful in design, decoration, and furniture; a hall in which the profession receives any distinguished person whom it delights to honour; consultation rooms and committee rooms, stenographers' and typewriters' rooms. Here also is a library, one of the most complete law libraries in the country, which is open night and day, Sunday and holiday! Besides this feature, two others strike the English visitor to the library, each of them rather surprising in a country where labour is dear. The first of these is the excellence of the attendance. Instead of hunting on the shelves or in the catalogue, the student touches an electric bell on his table, an attendant is at once by his side, ready to receive the slip on which has been written the title of the book or books required. If it is necessary to search the catalogue to find where the book is, this is done by the staff. Although necessarily but a small number of the books in the library are in the reading-room, the system of arrangement and the mechanical appliances are so good that seven or eight minutes are sufficient to obtain the least accessible of the works. Similar facilities exist for the consultation rooms: an electric bell communicates with the library from each of them. The other feature which struck one was the absence of dust both in the library furniture and in the books, and of that musty smell which, dear as it may be to some bibliophiles, is an accessory which most users of a library could very well do without. This desirable result is due to the regular use of vacuum cleaners. In these two points—rapidity with which books can be obtained by the visitor and wholesomeness—English libraries would appear to have a good deal to learn from America, for the library of the Bar Association of New York does not stand alone."

"**Roman-Dutch Law**": **Origin of the Term.**—Prof. R. W. Lee writes:

"By the courtesy of Judge-President Kotzé, of the Supreme Court of South Africa, I am able to supply the answer to two questions connected with the literature of Roman-Dutch Law which have interested students of that system.

"The first concerns the authorship of the term 'Roman-Dutch Law.' Certainly Van Leeuwen made it known and popular, but was he the inventor? His work, *Het Roomsch-Hollandsch Recht*, first appeared in 1664, and by 1708 was already in its ninth edition. It had been preceded by a slighter treatise published in 1652, and again in 1656, under the name, *Paratitula Juris Novissimi*, in which the phrase 'Roman-Dutch Law' appears as a sub-title. But there is no evidence of its earlier use. The question seems to be decided by the dedication to the eighth or ninth edition (Amsterdam, 1708), of which the Judge-President writes as follows: 'In this dedication (opdracht) Van Leeuwen says he has endeavoured to show how the Roman Law is to be applied in daily practice where local laws and customs are absent, pointing out likewise how the Roman Law differs from our own law or agrees with it, and consequently he has styled his book the Roman-Dutch Law ("het welk ik daarom de naam van Rooms-Hollands-Regt gegeven heb"). This, therefore, seems to settle the point.' The dedication is dated 1678, and no doubt appeared in an earlier edition. Van Leeuwen died in 1682.

"The other question relates to the authorship of the Supplement (Aanhangsel) to Kersteman's Woordenboek, a Law Dictionary, which is known, by name at least, to all practitioners of Roman-Dutch Law. It was published in Amsterdam in 1768, and the Supplement, which is twice its size, bears date 1772 and 1774. Kersteman's life history includes a period of twelve years' imprisonment for forgery (1774-86). The Aanhangsel is anonymous, but the author has now been identified as a notary named Lucas Willem Kramp. The discovery is due to Mr. de Korté, late a Judge of the Supreme Court in the South African Republic. There is a manuscript note to this effect in a copy of a Dutch translation of Voet's Titles on Tutors and Curators, formerly the property of the late Sir John Brand, President of the O.F.S. 1864-88. The attribution is rendered conclusive by the fact that in a little-known work by Kersteman, entitled *Secretary der hollandsche voogdyen ontslooten* (Amsterdam, 1790), he speaks of Kramp as the author of this Dutch translation of Voet. But the translator of these titles was the author also of the Aanhangsel, as well as of the notes to Lybrecht's *Redeneerend Vertoog over het Notaris Ampt* (Amsterdam, 1778), and of the Dutch translation of the *Parœmiæ* of Antonius Matthæus (Amsterdam, 1775), for one and all bear the same legend on the title-page: 'Door een Rechtsgeleerde onder de Zinspreuk—*Nisi utile est quod facimus, stulta est gloria.*' Further, the style of these works is said to be the same, and all draw copiously from Voet's Commentaries."

Domicile and the "animus revertendi."—Questions of domicile have an infinite variety of interest because they turn on the infinite caprice of human intention. In a recent New South Wales case (*Chen Chow* v. *Chen Chow*) a Chinaman had emigrated to New South Wales at an early age, been baptized in a Protestant church there, married a wife, and carried on business in the colony for thirty years, broken only by a two years' visit to Western Australia; but in a casual conversation with a friend, when asked if he would ever go home, he had replied, "Yes, me go home some day," and on the strength of this remark the judge before whom the case came (it was one for divorce) held that the Chinaman had never abandoned his original Chinese domicile or acquired a domicile in New South Wales. His idea—so thought the Judge—was to make as much money as he could in as short a time as possible and go back to China. But the New South Wales Court of Appeal took a different view. The Chinaman's words were much too indefinite to "outweigh actions which showed an intention of permanent residence," as Jessel M.R. said in an analogous case of *Douchet* v. *Geoghenan* (9 Ch. D. 441), a case in which a Frenchman, during his twenty-nine years' residence in England, had repeatedly declared his intention to return to France when he had made his fortune.

Nescio quâ natale solum dulcedine cunctos
Ducit

Goldsmith, in some of his tenderest lines in *The Deserted Village*, has witnessed to the yearning to go back to the scenes of childhood:

> And as the hare when horns and hounds pursue,
> Pants to the place from which at first it flew,
> I still had hopes, life's long vexations past,
> Here to return and die at home at last.

The "Me go home some day" of the simple Chinaman was the same sentiment less poetically expressed; but it was a sentiment, not an intention—that is the point, and not to be taken as determining the choice of his domicile.

Minors under Roman-Dutch Law.—The Editors are indebted for the following interesting report by Mr. F. J. Soertsz, Advocate, to the kindness of the Colonial Secretary, Colombo, Ceylon:

Grotius, 3. 1. 26 lays down that all obligations incurred by minors are invalid, except through delict or in so far as they have been benefited. They can neither alienate nor mortgage their own property. Grotius, 2. 48. 4.

In Ceylon there was much doubt at one time as to whether contracts entered into by a minor prejudicing his interests were void or merely voidable, and in a series of cases—2 C.L.R. 199, 1 S.C.R. 218, 1 S.C.R. 73—it was held that a conveyance by a minor was only voidable.

The question was, however, fully considered by the Supreme Court in 1902. The authorities were all reviewed, and a Bench of three judges held that a deed such as a donation by a minor to his prejudice was null and void, 5 N.L.R. 273. At about the same time two other judges held that a sale by a minor was not merely voidable, but absolutely void, 3 Browne 52. This is certainly the position laid down by the Roman-Dutch law-writers—*vide* Van Leeuwen, vol. i. p. 135, and Kotze's Translation, vol. i. p. 193; Maasdorp's Grotius, pp. 38 and 297; *Ceriscera Forensis*, 1. 9. 5; Burge, vol. iii. p. 178; Nathan's *Common Law of South Africa*, vol. i. p. 116.

The question whether this Roman-Dutch Law proposition would apply to Kandyan Unions was considered in August 1909, and in the following interesting judgment it was held that it would not, and that under the Kandyan Law contracts by minors are voidable only and not absolutely void.

FRANCIS J. SOERTSZ,
Advocate.

JUDGMENT.

Hutchinson C.J.—The first question in this case is whether by Kandyan Law a sale of his or her property by a minor is void, or only voidable. If we hold that the sale is only voidable, the other questions which have been discussed need not be considered.

The fact that the minor is a married woman at the date of the sale does not affect the question. For although a Low-country Sinhalese woman under twenty-one years of age attains majority by marriage (by virtue of the Roman-Dutch rule, which, in the case of Low-country Sinhalese, is preserved by s. 2 of Ordinance No. 7 of 1865), it has been decided that this rule does not apply to Kandyans; so that a Kandyan woman who marries under the age of twenty-one is still a minor till she attains that age.

If Sawer and Armour are to be taken as authorities, a sale of his land by a minor was not wholly void by Kandyan Law; but the seller could "break the bargain" on repayment of the purchase-money which he had received. No decision of the Courts clearly negativing that rule has been quoted to us.

Transfers by minors on sale or as a gift have, after some conflict of opinion, been held to be wholly void in cases to which the Roman-Dutch Law applied; but there seems to be no case reported in which the Kandyan Law on the subject has been clearly laid down. In the absence of any such authority, and until the Legislature deals with the matter, I think that we ought to take the rule of Kandyan Law to be as stated by Sawer. The transfer on which this defendant relies was made to him by Bandara Menika on December 7, 1895. The consideration which he paid for the land was Rs. 4,000. He took possession after his purchase, and is still in possession. The District Court has found, and I think we cannot reject the finding, that Bandara Menika was born in April 1877; so that at the date of the transfer she was a minor of the age of eighteen. She was married at the date, and her husband was one of the witnesses who attested the execution of the transfer. She attained her majority in April 1898, and died in January 1905 without having done anything to show that she repudiated the sale. The plaintiff was her husband and is the executor of her will, which has been duly proved. He brought this action on January 16, 1908, just before the expiration of ten years from the day when Bandara Menika attained her majority. If, therefore, the sale was not wholly void, it cannot now be repudiated by Bandara's executor, and the appeal should be allowed, and the action dismissed with costs in both Courts.

Middleton J.—This was an action by the executor of a deceased Kandyan married minor to recover possession of two pieces of land.

The defence was that the lands were sold to the defendant in December 1895 for Rs. 4,000, with the consent of the deceased's husband; alternatively, that the deceased was not a minor at the date of the sale, and that defendant had since thereby acquired a title by adverse possession; that, if she was a minor, she was estopped by her conduct from denying the validity of the sale, and thereafter on attaining majority by acquiescence in the sale; that the sale was for the benefit of the minor, and could not be repudiated, and that the action in any case could not be maintained without a tender of the purchase-money by the plaintiff. The defendant claimed in reconvention to receive, in case the plaintiff be declared entitled to the land, the purchase-money, Rs. 4000, and further a sum of Rs. 3000 as compensation for improvements to the land.

[His Lordship set out the issues and continued:]

The District Judge gave judgment, declaring the land in dispute the property of the plaintiff's testator, and decreed the ejectment of the defendant and quiet possession to the plaintiff; and further awarded the sum of Rs. 1,247.10 as compensation to the defendant.

The defendant appealed (1) on the ground that the deed was good according to Kandyan Law, (2) that he had obtained a title by prescription, and (3) that the compensation had been wrongly assessed, and that he should have been awarded the purchase-money in addition.

As regards the Kandyan Law, the passage from Perera's Armour, p. 2, and Perera's Collection, p. 27, Modder, p. 182, relied on, were all considered in *Muttiah Chetty* v. *Dingiria et al.*, 10 N.L.R. p. 371.

That case decided that a Kandyan minor, married woman, did not attain majority by marriage.

I have sent for the record in *Muttiah Chetty* v. *Dingiria*, and I find that the learned District Judge, who was acting as Commissioner of Requests, and gave the judgment appealed against in that case, certainly stated as follows: "I am of opinion that under the Kandyan Law (1) a minor is protected from the evil effects of contracts entered into by such minor during his or her minority, (2) that such contracts are void in law, (3) that a Kandyan husband joining with his wife in any contract does not legalise such void contract."

When the case came before the Supreme Court the only point argued was that which was decided, and the question was never raised whether the contract in question was void or voidable; but, following the judgment appealed against, the judgment of the Supreme Court may have the appearance of confirming a judgment which held such a contract void. If, however, the judgment appealed against in that case be further examined, I think it appears, from the observations of the learned Commissioner, that he thought the Court had an equitable jurisdiction to set aside such a contract, even if it were consistent with the existing positive law, and that his real ruling on the question was that the contract was voidable and not void.

The Supreme Court judgments all seem to me to decide merely the abstract question whether a Kandyan minor attained majority by marriage.

In my opinion, therefore, it cannot be said that the Supreme Court decided in that case that the contract was void, but rather that it was voidable only as being prejudicial to the minor.

If, however, that case decided that the contract in question was void, its fullest force would be to rule that a promissory note entered into by a Kandyan married minor in conjunction with her husband was void against the wife on the ground of minority.

This would merely be the application of the principle of s. 18 of the Infants' Relief Act of 1874 to Kandyan minors in respect to the repayment of money lent, and would not affect consequentially or necessarily the voidability of transfers of land, which is governed by special traditions embodied by Sawer and others.

In *Siriwardene et al.* v. *Loku Banda*, 1 S.C.R. p. 218, Burnside C.J. held that a deed of conveyance of land by a Kandyan infant was voidable and not void.

Under Roman-Dutch Law the conveyance by a married woman under the age of twenty-one of the maritime provinces of her immovable property with the consent of her husband would be a perfectly good conveyance, as the Roman-Dutch Law confers majority by marriage.

The case in *Van Derstraaten*, p. 251, was of the same kind as in *Muttiah Chetty* v. *Dingiria et al.*, liability on a bond. In *Ukku* v. *Yatawila Arumedureya*, Modder, p. 119, the liability was on a lease, and I should gather that in each of those cases the Court thought that to hold the minor to the obligation would be detrimental or prejudicial to her.

We find, however, *Muttiah* v. *de Silva* (1 N.L.R. p. 358), Bonser C.J. holding that a joint and several promissory note granted by a father and a minor son must be held good as against the son, because it must be presumed to have been made with the consent of the father. This was under the Roman-Dutch Law.

Also under the Roman-Dutch Law a sale by a minor of immovable property has been held void [3 Br. pp. 12 and 150 (see also 3 S.C.C. p. 46; and 6 N.L.R. p. 367, and the authorities quoted there)].

I do not think, therefore, we are concluded by the decision of the Full Court in *Muttiah Chetty* v. *Dingiria et al.*, and I am strongly of opinion that we should hold, if possible, that the contracts of minors are, as a general rule, not absolutely void under Kandyan Law, but voidable.

According to D'Oyley's Notes, p. 26, Perera's Collection, Sawer's Digest, all Kandyan deeds of transfer of land were revocable at pleasure during the life of the alienator on repayment of the purchase-money and value of the improvements, but the heirs of the alienator were excluded from this liberty after his death.

Again, p. 29, Perera's Collection, Sawer's Digest, p. 28, a youth under sixteen could break a bargain and resume possession of land he had sold on refunding the value which he had received.

Again, at p. 29 Perera's Collection, Sawer's Digest, p. 29, the heirs of a minor had the right to interfere and prevent his selling his property when it came to their knowledge, and if he did so without their knowledge and died in nonage, they apparently had a remedy to set it aside.

The same rules apply to females.

Armour repeats the same doctrine from Sawer, p. 2.

I gather from the text, therefore, that a minor's sale of immovables was not absolutely void, but voidable, and was allowed to be avoided only on repayment of the purchase-money, and probably and equitably of the value of improvements.

I do not think, therefore, we should be conflicting in any way with the ruling in *Muttiah Chetty* v. *Dingiria* by holding here that the minor had entered into a voidable contract.

But here the minor sold the land with the consent of her husband, who now seeks to set aside the sale without even tendering the purchase-money.

The husband, however, is probably not the only heir; but even if the other heirs object, the minor did not die in nonage, but after she attained her majority, and without repudiation of the sale; and no detriment or disadvantage to the minor is proved.

I would hold, therefore, that this is a sale which ought not to be voided, and would dismiss the plaintiff's action and allow this appeal with costs.

Opinions of Attorneys-General of the United States.—A feature of the latest report of the Registrar of Copyrights of the United States is the publication of the opinions of the Attorney-General upon questions as to copyright which have arisen in 1910-11. As usual, the law officer is asked to give his opinion as to concrete cases and to state his reasons. It is common knowledge that the "official opinions of the Attorneys-General of the United States" are regularly published; but few English lawyers realise the wide variety of cases to which these opinions relate: not merely matters in which the Government is directly interested, but also matters affecting individuals. For example, the Attorney-General gives in the latest report an elaborate opinion with respect to an application by one J. Baumann under the Act of 1909 as to the meaning of "work of art." It is interesting to note that the publication of the law officer's opinions seems as natural to American lawyers as it seems strange to English lawyers.

The New Swiss Civil Code.—On January 1 came into operation the new Civil Code for Switzerland. It has been long in preparation. It is largely based upon the German Civil Code, but it contains original features to which many jurists have contributed, and not least Prof. Eugen Richter of Berne. We hope to call attention in the Journal to some of its chief features. For the present we would note only one remarkable provision in it as to the decision of cases to which no specific rule applies: a provision doubtless framed with an eye to the fact that those who administer the law in Switzerland are largely laymen: "Kann dem Gesetz keine Vorschrift entnommen werden, so soll der Richter nach Gewohmheitsrecht und, wo such ein solches fehlt, nach der regel entscheiden, die er als gesetzgeber aufstellen wurde." Here is judge-made law in all its nudity.

The Increase in Young Criminals.—Everywhere there are complaints as to the increase of young criminals. For example, one finds evidence of the growth of such criminals in the latest returns in *Statistica Italiana della Criminalita.* In certain cities—*e.g.* Trani, Naples, Rome, Genoa, and Milan—they are 32 per cent. of the total convicted. Those between eighteen and twenty-one were about 967 per 100,000 as compared with 538 within ages between forty and fifty. One significant fact is noted: 56·09 per cent. of the convicted could neither read nor write, and only 1·72 per cent. had received instruction above the elementary grade. Another ugly fact is the increase in the proportion of recidivists: it has risen from 31·12 per cent. to 33·13 per cent. Italy, it will be seen, has other campaigns before it to be conducted nearer home than Tripoli.

Bentham and Codification.—In M. Nys's article in the latest number of *The American Journal of International Law* on its codification, there is some interesting testimony as to the influence of Bentham upon its development. The writer quotes from a manuscript in the British Museum a passage which may be of interest in these days when the expediency of treating all nations as equal at congresses or conferences is challenged: "The fundamental principle to be agreed upon by all the States is universal equality; no State to pretend to any authority on any other State; all States are to be on a par in congress, whatsoever the form of government. . . . Under a system of international law the imperative could not be exercised by any authority, not even by the international congress. The faculty of issuing imperative decrees with power for giving execution and effect to them would have the effect of an attempt to establish a universal republic inconsistent with the sovereignty of the sovereigns within their several respective dominions."

S.
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